
***DETENTION AND
CORRECTIONS
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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1970

U.S. District Court
CELLS
DORMITORIES

Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970). State prisoners challenged conditions and practices in the state prison system. The district court held that conditions and practices in the Arkansas penitentiary system, including a trusty system whereby trustees ran the prison, open barracks system, conditions in isolation cells, and absence of a meaningful rehabilitation program, were such that confinement of persons in the system amounted to cruel and unusual punishment prohibited by eighth and fourteenth amendments. Confinement in an otherwise unexceptional penal institution is not unconstitutional simply because an institution does not operate a school, or provide vocational training or other rehabilitative facilities and services, but the absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such program, conditions and practices exist which actually militate against reform and rehabilitation.

Term "cruel and unusual punishment" cannot be defined with specificity. It is flexible and tends to broaden as society tends to pay more regard to human decency and dignity and becomes, or likes to think that it becomes, more humane. Generally speaking, punishment that amounts to torture, when it is grossly excessive in proportion to the offense for which it is imposed, or that is inherently unfair, or that is unnecessarily degrading, or that is shocking or disgusting to people of reasonable sensitivity is a "cruel and unusual punishment"; and punishment that is not inherently cruel and unusual may become so by reason of the manner in which it is inflicted. (Arkansas Prison System)

1972

U.S. District Court
SEPARATION

Patterson v. Hopkins, 350 F.Supp. 676 (N.D. Miss. 1972). Juveniles need not be kept in a separate detention center from adults as long as they are provided with separate quarters in the county jail. (Coahoma County Jail, Mississippi)

U.S. District Court
CELLS
PLUMBING
CHAPEL
PADDED CELL

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g. denied, 420 U.S. 983 (1974). The use of substandard facilities for punitive segregation, and the practice of placing inmates in segregation cells without clothing are unconstitutional. Court ordered that solitary cells be provided with a bunk, water closet, drinking fountain and lavatory, and be of not less than forty square feet in dimension. An inmate who is confined in a solitary cell for more than three days shall have a hearing, before an impartial board, and no inmate shall be confined in solitary for over fifteen days. Court ordered county officials to include quarters for chapel services in permanent plan for new facilities. Court ordered that padded cells with hammocks be provided for insane persons. (Dallas County Jail, Texas)

1975

U.S. District Court
SEPARATION
SPECIAL CELL

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). No pretrial detainee shall be housed in the same cell or cellblock with any person who has been convicted and sentenced. Alcoholic and drug-dependent inmates shall be housed in an incarcerative environment specifically designed and equipped for the treatment of withdrawal problems. Jail officials shall establish a separate diversion program for alcoholic and drug-dependent inmates, including hiring a specialist in drug and alcohol withdrawal treatment and developing specially equipped facilities. (Harris Co. Jail, Texas)

1976

U.S. District Court
SEPARATION
ATTORNEY-CLIENT
AREA

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). No pretrial detainee may be housed in the same cell with a convicted person. Facilities for confidential attorney client conferences must be established. Restrictions on visiting contribute to denial of effective assistance of counsel, ability to assist in preparation of a defense and to secure witnesses. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
KITCHEN
ATTORNEY-CLIENT
AREA

Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Deterioration of kitchen area contributes to finding of unconstitutionality. Use of public hallway for attorney-client consultation contributes to finding of unconstitutionality. Private facilities must be provided. (Douglas County Jail, Nebraska)

1977

U.S. District Court
CAPACITY

Anderson v. Redman, 429 F.Supp. 1105 (D. Del. 1977). Overcrowding is found to have caused a breakdown in prison classification system. Pretrial detainees are exempted from population limit based on "classification capacity" because detainees are not classified. However, design capacity is never to be exceeded. (Delaware Correctional Center)

U.S. District Court
MEDICAL EXAM

Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Sick call is to be held by a physician at least twice a week. Examination facilities are to be provided. (Lubbock County Jail, Texas)

1978

U.S. District Court
CELL CAPACITY

Burks v. Walsh, 461 F.Supp. 454 (W.D. Missouri, 1978). Actions were brought seeking injunctive and declaratory relief on behalf of inmates at the Missouri State Penitentiary. After a trial limited to the issues of overcrowding and unsanitary conditions, the district court held that: (1) triple celling inmates in 59.2-square-foot cells in the diagnostic center, in 65-square-foot cells in the administrative segregation unit, and in 66-square-foot cells in the adjustment unit, as well as double celling of inmates in 47.18-square-foot cells in the special treatment unit, constituted cruel and unusual punishment in violation of the eighth amendment, but (2) except in such instances, the conditions in the aggregate which presently existed at the State Penitentiary did not violate the cruel and unusual punishment clause of the eighth amendment.

In examining conditions of state penitentiary, the court's inquiry had to be limited to determining whether conditions at the penitentiary caused inmates to suffer deprivations of constitutional dimensions. In determining whether conditions at the state penitentiary constituted cruel and unusual punishment, the district court had to be cautious not to place undue emphasis upon "design capacities" and minimum square footage mandates of other courts, nor were minimum square footage standards of various professional associations dispositive. Furthermore, in applying the "totality of circumstances" approach to Missouri Penitentiary conditions, the relaxed amicable atmosphere generated by the prison administration had to tip scales in favor of the state in areas of doubtful constitutionality. In the aggregate, and with certain exceptions regarding overcrowding in certain units, all conditions presently existing at Missouri State Penitentiary, including but not limited to conditions and qualities of individual cells, showers, toilets, dining halls, kitchen, windows, temperature, noise level, canteen, recreational areas, laundry service, ventilation systems, visiting room, pest control program, prison industries and other activities, are not intolerable in light of the modern conscience, or shocking to the conscience of the court, and thus do not violate cruel and unusual punishment clause of the eighth amendment. The Missouri State Penitentiary is overcrowded but, because it has so much acreage within the walls, because of the many and varied activities available to inmates, and because of the relative freedom enjoyed by inmates to utilize recreational areas and the many activities available to them, the penitentiary, viewed as a whole, is not now so overcrowded as to be intolerable, inhumane, totally unreasonable in light of the modern conscience, or shocking to the conscience of the court. Double celling of penitentiary inmates in 65-square-foot cells in administrative segregation unit was not intolerable, inhumane, totally unreasonable or shocking to the court's conscience where common areas of unit were very clean and sanitary, individual cells were reasonably clean and sanitary, and the unit was utilized to punish those inmates who committed serious offenses while confined in penitentiary. Double celling of state penitentiary inmates in diagnostic unit cells measuring 59.2 square feet for period of one to five weeks did not violate the eighth amendment, in spite of the fact that inmates were confined to their cells for greater portion of day than were inmates in general population, where they could leave their cells three times daily for meals, once a week to go to canteen, once a week to go to movies, and once a week for two hours of gym and where, in addition, much of their time was occupied by meetings with caseworkers, taking a battery of tests and physical examinations. (Missouri State Penitentiary)

U.S. District Court
PROTECTIVE
CUSTODY
CELLS
DORMITORY
MEDICAL AREAS

M.C.I. Concord Advisory Bd. v. Hall, 447 F.Supp. 398 (D. Mass. 1978). In a civil rights action brought to challenge conditions of confinement at a state correctional institution, the district court held that: (1) plaintiff prisoners sustained the burden of proving that incarceration of inmates in protective custody cells, in awaiting action cells and in institutional holding cells violated eighth amendment standards, but (2) plaintiffs failed to sustain their burden of proving that double celling in one area and use of a hospital wardroom for a dormitory violated eighth amendment standards. Injunctive relief was granted in part.

An eighth amendment proscription against cruel and unusual punishment is flexible, drawing its meaning from evolving standards of decency that mark the progress of maturing society, and penal measures are to be evaluated against broad and idealistic concepts of dignity, civilized standards, humanity and decency. An equal protection challenge to a policy under which inmates undergoing classification and placement at state institutions were single-celled in contrast to double celling during classification at one institution involved neither suspect classification nor fundamental interest, and a heavy burden rested with plaintiff prisoners to demonstrate that no rational justification existed for separate classification programs.

Nothing in the constitution requires prison officials to treat all inmate groups alike where differentiation may avoid institutional disruption or violence. Actions of prison officials in separating newly admitted inmates and protective custody prisoners from the general prison population are subject to a basic due process requirement that such distinctions be rational rather than arbitrary or capricious, but, on record, that method of classifying inmates within this particular institution was not shown to be arbitrary or capricious.

Prisoners failed to sustain burden of proof that dormitory use of a hospital wardroom violated constitutional rights of inmates who slept therein and failed to show that use of the wardroom infringed on constitutional rights of inmates to adequate medical care. (M.C.I. Concord, Mass)

1979

U.S. Supreme Court
DOUBLE CELLING
CELL CAPACITY

Bell v. Wolfish, 441 U.S. 520 (1979). Pretrial detainees confined in the Metropolitan Correction Center (MCC) in New York City challenged virtually every facet of the institution's conditions and practices in a writ of habeas corpus, alleging such conditions and practices violate their constitutional rights.

MCC is a federally operated, short-term detention facility constructed in 1975. Eighty-five percent of all inmates are released within sixty days of admission. MCC was intended to include the most advanced and innovative features of modern design in detention facilities. The key design element of the facility is the "modular" or "unit" concept, whereby each floor housing inmates has one or two self-contained residential units, as opposed to the traditional cellblock jail construction. Within four months of the opening of the twelve-story, 450 inmate capacity facility, this action was initiated.

The U.S. District Court for the Southern District of N.Y. enjoined no less than twenty practices at the MCC on constitutional and statutory grounds, many of which were not appealed. See, United State Ex Rel. Wolfish v. Levi, 439 F.Supp. 114 (S.D.N.Y.). The Second Circuit Court of Appeals affirmed the district court decision, See, Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), and reasserted the "compelling-necessity" test as the standard for determining limitations on a detainee's freedom.

The U.S. Supreme Court granted certiorari "to consider the important constitutional questions raised by [recent prison decisions] and to resolve an apparent conflict among the circuits." 441 U.S. at 524: Do the publisher-only rule, the prohibition on receiving packages from outside sources, the search of living quarters, and the visual inspection of body cavities after contact visits constitute punishment in violation of the rights of pretrial detainees under the due process clause of the fifth amendment?

HELD: "Nor do we think that the four MCC security restrictions and practices...constitute 'punishment' in violation of the rights of pretrial detainees under the due process clause of the fifth amendment." 441 U.S. at 560, 561.

REASONING:

- a. [T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. 441 U.S. at 561.
- b. Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both...[W]e think that these particular restrictions and practices were reasonable responses by MCC officials to legitimate security concerns. [Detainees] simply have not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations that activated these restrictions and practices. 441 U.S. at 561, 662.

CLOSING COMMENTS OF MAJORITY OPINION: "[T]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the constitution, or in the case of a federal prison, a statute. The wide range of 'judgment calls' that meet constitutional and statutory requirements are confined to officials outside of the judicial branch of government." 441 U.S. at 562.

GENERAL NOTES: The Court saw this case, a challenge to virtually every aspect of the operation of a state of the art detention facility, as an opportunity to clarify the judiciary's role in the operation of prisons. The five-four decision indicates there was no general consensus as to what that role is, or how it should be applied. No less than three possible standards of review are contained in the majority and dissenting opinions: 1) A "rational basis", subjective test; 2) A balancing of interests test; 3) An objective standard of review.

Despite J. Rehnquist's statement that "our analysis does not turn on the particulars of the MCC concept or design," the majority's reasoning frequently looks to that concept or design for justification of its positions. 441 U.S. at 525. Clearly, the "double-bunking" holding should be interpreted as applicable only to facilities where:

- a) Inmates are locked in their cells a maximum of eight hours a day and have access to a wide range of activities and programs; and
- b) No inmate is detained longer than sixty days.

Situations other than these likely will not fall within the strict holding on this issue. (Metropolitan Correction Center (MCC), New York)

U.S. District Court
CELL CAPACITY
DORMITORIES

Feliciano v. Barcelo, 497 F.Supp. 14 (D. P.R. 1979). The institution is found to be overcrowded. The court orders that the housing shall immediately provide at least thirty-five square feet of space per inmate and that eventually, standards of seventy square feet per inmate in cell and fifty-five square feet per inmate in dormitories be implemented. (Correctional System, Puerto Rico)

U.S. Appeals Court
SEPARATION

Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), cert. denied, 102 S.Ct. 27 (1980). In this opinion, the U.S. Fifth Circuit Court of Appeals reviewed Mississippi District Court Judge William Cox's ruling on what the Fifth Circuit termed a "challenge to nearly every conceivable facet of the Jackson County Jail at Pascagoula, Mississippi."

The court first noted that the conditions at the Jackson County Jail were not "uncivilized" or "barbaric and inhumane", as the court had found rulings on the conditions of other jails.

A peculiar aspect of this case was that convicted felons were being held in the jail while the state penitentiary was being brought up to constitutional standards. Consequently, there were convicted felons, convicted misdemeanants and pretrial detainees in the jail. Accordingly, the court, in reviewing the conditions at the jail, applied different standards depending on whether the inmate was a pretrial detainee or a convicted felon or misdemeanant.

The court then reviewed the history of corrections in the State of Mississippi and specifically in Jackson County. It noted that Jackson County officials had spent a considerable amount of money and instituted several new programs in the last ten years. In addition, at the time of this opinion, the county was in the process of erecting a new jail. After noting these facts, the court made rulings in the following areas.

DISCRIMINATION. The appellate court upheld the lower court's ruling that the cells at the Jackson County Jail were not segregated. Two bull pens at the jail, however, were ruled to be unconstitutionally segregated. In response to the plaintiff's interrogatories, the jail officials had produced documents showing that the large bull pen was "white" and the small bull pen with "colored." The jail officials argued that they were not responsible for the segregation because each new inmate was given the freedom to choose which bullpen he wished to occupy. The court held that this was not enough, stating: "In the inherently coercive setting of a jail, it is evident to us that the withdrawal of decision making by the public officials for only part of the jail (here, the bull pens), amounts to impermissible racial segregation of prisoners."

OVERCROWDING. Although there had been a serious overcrowding problem at the jail, the construction of the new jail eliminated any further problem. The court ruled, however, that overcrowding at the old jail was prohibited.

CLASSIFICATION. The court noted that the Constitution does not require that a classification plan be put into effect, although a court may order such a plan to protect inmates from homosexual attacks, violence and contagious diseases. The court ruled that the policies in existence under the Mississippi Code were adequate to protect the inmate.

SANITATION. At the Jackson County Jail, the prisoners were responsible for cleaning their own cells, and a trusty was to assume responsibility for cleaning the cells when the inmate was unable or unwilling to clean after himself. There was no evidence of rodents in the jail. The jail was sprayed for insects once a month to minimize the cockroach problem. Sheets and other bedding as well as clothes were cleaned regularly. Under these circumstances, the court found no constitutional violations regarding the sanitation of the Jackson County Jail. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Appeals Court
CELL CAPACITY

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). The U.S. Court of Appeals for the Eighth Circuit ruled that the county jail shall provide 130-154 square feet of space for four inmates detained more than sixteen hours per day. The same space must be available where three are held, if they are detained more than one week. (Sebastian County Jail, Arkansas)

U.S. District Court
CROWDING

Capps v. Atiyeh, 495 F.Supp. 802 (D. Ore. 1980). The court suggests a five part test to determine whether overcrowding is unconstitutional:

1. The duration of prison confinement;
2. The degree to which the population exceeds the institution's design capacity;
3. The size of the living quarters and the number of hours that an inmate must spend therein;
4. The effects of the increased population on the prisoner's mental and physical health;
5. The relative permanency of the overcrowding.

The court finds the institution to be overcrowded and accepts the defendants' plan to relieve the overcrowding without necessarily endorsing any portion of it. (Oregon State Penitentiary)

U.S. District Court
FIRE SAFETY
NOISE
LIGHTS
VENTILATION
WINDOWS

Hutchings v. Corum, 501 F.Supp. 1276 (W.D. Mo. 1980). Class action is brought challenging the constitutionality of numerous conditions and practices at the county jail. The district court held that: (1) prison authorities' failure to immediately evacuate inmates from any sewage contaminated cell, pending thorough cleaning of cell, violated constitutional rights of inmates subject to that condition; (2) deficiencies in jail, including lack of fire escape, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions. Prison conditions for an unconvicted person are to be judged against due process standards of the fifth and fourteenth amendments and conditions within the penal institution which are unconstitutional for the convicted person under eighth amendment review are likewise an abridgment of due process guarantees afforded unconvicted persons.

The claim that financial restrictions have prevented improvements in jail conditions is not a defense to constitutional violations.

Although lights were left on all night in the county jail, and there was a high noise level at night, such were not per se unconstitutional conditions, since inmates could sleep during the day, and there was no indication that inmates had developed psychological or physiological problems.

An entirely inadequate ventilation system at the county jail constituted a constitutionally intolerable living condition.

Deficiencies in the county jail, including lack of fire escapes, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions. (Clay County Jail, Missouri)

U.S. District Court
CELLS
PLUMBING

Lightfoot v. Walker, 486 F.Supp. 504 (S.D. Ill. 1980). All cells are to have a working toilet and sink with hot and cold water. (Menard Correctional Center, Menard, Illinois)

U.S. District Court
CROWDING
RELIGIOUS AREAS
RECREATION AREAS
EDUCATION AREAS
VISITATION AREAS

West v. Lamb, 497 F.Supp. 989 (D. Nev. 1980). The latest round of litigation concerning conditions at the Las Vegas Central Detention Facility and Annex has resulted in a court ordered reduction in the prisoner population. The United States District Court for Nevada began hearing complaints about conditions at these facilities after a class action suit was filed in August, 1977. In a series of inquiries since that time, the court has heard from experts in the field of detentions and corrections. These experts inspected the jails and reported that brutal, depraved, cruel, uncivilized and inhuman treatment of the inmates was occurring. The experts found severe overcrowding, racial segregation, poor morals among correction officers and inmates alike, regularly occurring homosexual attacks, inadequate health care, unsanitary conditions, inadequate food services, no recreational, religious, educational or exercise facilities and poor visitation facilities.

After reviewing this information, the court stated that if there were any other correctional facilities available in southern Nevada it would close down the subject jails. The court found the jails unfit for human habitation and deemed it doubtful that they could be made fit without gutting and rebuilding. The court stated that a delicate balance must be maintained between public safety and the confining of inmates in as humane conditions as possible. It held that public safety must always come first and that the lives and safety of inmates are secondary. The court then ordered that the inmate population be reduced from 500 to 178 and that jail officials attain this goal within 180 days. The court then cautioned state judges not to enlarge the population by ordering prisoners to be housed in the jail after the limit had been reached. (Las Vegas Central Detention Facility and Annex, Nevada)

U.S. District Court
PLUMBING
CELLS

Heitman v. Gabriel, 524 F.Supp. 622 (W.D. Mo. 1981). Plumbing conditions are cited. In this case against the Buchanan County Jail, the United States District Court ordered that no inmate is to be assigned to a cell used as a communal toilet, and ordered the jail's plumbing to be cleaned and repaired. The court also found that the jail was overcrowded considering all of the conditions, particularly the plumbing and the lack of out-of-cellblock exercise. (Buchanan County Jail, Missouri)

U.S. District Court
CROWDING

Hendrix v. Faulkner, 525 F.Supp. 435 (N.D. Ind. 1981), cert. denied, 104 S.Ct. 3587 (1983), aff'd, 715 F.2d 269. The conditions of overcrowding at the Indiana State Prison constitute a violation of the eighth amendment in light of the physical plant and limits on staffing. Therefore, prison officials were required to take immediate action to ameliorate the conditions. Contributing to the limited time out of the cell is a sheer number of inmates. There was testimony that some inmates had not had outside recreation in five months. However, other conditions at the prison did not rise to the level of constitutional violations. (Indiana State Prison)

U.S. Appeals Court
SEPARATION
CROWDING

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981)(en banc). Where the conditions of the institution have improved but there is nothing in the record which would suggest any basis for an assurance that the conditions would not change, injunctive relief is warranted. An injunction prohibiting racial segregation, overcrowding and discipline, except in accordance with the newly prescribed rules, was entered. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Appeals Court
CROWDING
CELL CAPACITY
DORMITORY
DAYROOM

Lareau v. Manson, 651 F.2d 96 (2nd Cir. 1981). Adopting most of the findings of the district court, the United States of Appeals for the Second Circuit ordered major reforms in the Hartford Community Correctional Center (HCCC), dealing generally with overcrowding. The constitutional standard for the legality of conditions of confinement is different for pretrial detainees and for convicted inmates. For pretrial detainees, the test is whether the conditions amount to punishment without due process in violation of the fourteenth amendment. With respect to convicted inmates, the criterion is whether the punishment is cruel and unusual as defined under the eighth amendment. Reviewing the numerous findings of the district court, the appellate court looked to the supreme court case of Bell v. Wolfish, 441 U.S. 520. Viewing overcrowding at the HCCC as related to pretrial detainees, the court cited the following standard of whether such conditions amount to punishment: "It must be shown that the overcrowding subjects a detainee over an extended period to genuine privation and hardship not reasonably related to a legitimate governmental objective." Based upon this standard the court found that double-bunking in cells originally designed for one person, compounded by overcrowded dayrooms, imposed unconstitutional punishment on pretrial detainees in all cases except where such hardship was related to a legitimate governmental purpose. The court here found that these hardships promoted neither security nor the effective management of the institution. Other conditions were even less acceptable. The use of glass enclosed dayroom (dubbed the "fish tank") as a dormitory room housing numerous inmates on a full time basis was held to amount to punishment and was thus unconstitutional with regard to pretrial detainees. In addition, the placing of mattresses on the floors of cells to accommodate more inmates and the assignment of healthy inmates to medical cells (sometimes with mentally or physically ill cellmates) to alleviate overcrowding were held to constitute impermissible punishment. The court further stated that the length of incarceration of pretrial detainees becomes relevant in such determination: "Conditions unacceptable for week or months might be tolerable for a few days." As such, the court indicated that while double-bunking and overloaded dayrooms might be tolerable, and thus constitutionally permissible for a few days, after 15 or so days, they would become unacceptable punishment. The use of the "fish tank" and floor mattresses, however, were held to constitute punishment regardless of the number of days imposed. Viewing the conditions as they related to convicted persons, the court pointed out that it was to be guided by a wholly different standard. Here, in order to constitute a constitutional violation, the conditions had to be such as to amount to cruel and unusual punishment. Nevertheless, the court found the overcrowded conditions intolerable. Noting that the thirty to thirty-five square feet of living space per inmate fell far short of the standards promulgated by groups such as the Connecticut Department of Corrections, the American Correctional Association, the United Nations and the National Sheriffs' Association, and further noting that the dayroom at the HCCC offered the "relief of a noisy subway platform" the court held that double-bunking, with respect to convicted inmates, was unconstitutional except where inmates are confined no more than about thirty days. As with the pretrial detainees, the court found that the constitutional rights of the convicted inmates were immediately violated by confinement in the "fish tank" and by policies requiring them to sleep on mattresses on the floors and to be assigned to medical holding cells for no reason other than to alleviate overcrowding.

Finally, the court ordered that all newly admitted inmates, with minor exceptions, be given a medical examination within forty-eight hours of admission. (Hartford Community Correctional Center, Connecticut)

U.S. Appeals Court
CELLS

Lock v. Jenkins, 641 F.2d 488 (7th Cir. 1981). The U.S. Court of Appeals for the Seventh Circuit ruled that having pretrial detainees confined to twenty-seven square foot cells for twenty-two hours a day at the Indiana State Prison constitutes illegal "punishment" under Bell v. Wolfish. In Wolfish, the Supreme Court found no due process violations in holding two pretrial detainees in a cell measuring seventy-five square feet. The Court pointed out that inmates were required to be in their cells only seven to eight hours a day and that of the pretrial detainees at the Metropolitan Correctional Center, the facility sued in Wolfish, more than half were released within ten days, three-quarters within a month, and more than eighty-five percent within sixty days. Therefore, the Seventh Circuit cited Wolfish because of the amount of time spent by pretrial detainees at the Indiana institution, an average of about sixty days. The Circuit Court stated:

It seems to us that a minimum requirement as to cell area should be imposed and this minimum should be determined flexibly in relation to the amount of time individuals are to be kept in the cell...Except where individual circumstances show the need for more restrictive confinement, (detainees) should be allowed to spend significant periods of each day out of their cells and some activities or programs should be regularly available to them in their time out of cells...

We do not read anything in Wolfish as requiring this court to grant automatic deference to ritual incantations by prison officials that their actions foster the goals of order and discipline. Under the facts before us, we find that the (detainees) in this action have been denied equal protection of the laws by being held under significantly more burdensome conditions than convicted prisoners in the absence of any justification of such treatment of each individual. (Indiana State Prison, Michigan City, Indiana)

U.S. Supreme Court
CELL CAPACITY
SAFETY
GENERAL
CONDITIONS

Rhodes v. Chapman, 101 S.Ct. 2392 (1981). In a remarkable 8 to 1 decision, the Supreme Court upheld double celling at the Southern Ohio Correctional Facility at Lucasville. The maximum security facility was built in the early 1970's with gymnasiums, workshops, school rooms, day room, two chapels, a hospital ward, a commissary, a barber shop and a library. The physical plant itself is a topflight first class facility. Each cell is sixty-three square feet in area and contains a bed or bunk bed measuring thirty-six by eighty inches, a cabinet nightstand, a wall-mounted sink with hot and cold water, a flushable toilet and a built-in radio. One wall of each cell is barred. Day rooms are open from 6:30 a.m. until 9:30 p.m., and inmates may pass between these rooms and their cells for a ten minute period each hour. At the time of the trial, the facility housed 2,300 inmates, two-thirds of whom were serving life or long-term sentences. Some 1,400 men were double celled. Despite the favorable nature of the plant's design, the district court found that double celling constituted cruel and unusual punishment. The Supreme Court reversed, noting: "No static test can exist by which courts determine whether conditions are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Applying those principles to this institution, the court found that the evidence did not support a conclusion that the eighth amendment was violated. The majority said:

The double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement. Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain. Deprivations of this kind simply are not punishment.

The Court continued, "We would have to wrench the eighth amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution." Three justices, Brennan, Blackmun and Stevens, authored a concurring opinion. It attempted to list some of the things which would determine whether a facility has such poor conditions as to violate the eighth amendment. Those conditions are:

- Physical plant conditions: lighting, heat, plumbing, ventilation, living space, noise levels, and recreation space.
- Sanitation: control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping and working.

- Safety: protection from violent, deranged or diseased inmates, fire protection and emergency evacuation.
- Staffing: trained and adequate guards and other staff, and avoidance of placing inmates in positions of authority over other inmates.

This majority of justices cautioned that sixty-three square feet of cell space is not enough for two men. Such conditions, they noted, are a clear signal to legislative officials that additional facilities must be constructed or inmate populations reduced by other means. The justices did state, however, that cramped facilities are not unconstitutional per se.

NOTE: This decision dealt with long-term convicted inmates, not short-term persons in county and city jails. In some circumstances, pretrial detainees who are still presumed innocent until convicted have greater rights, such as access to lawyers and courts. On the other hand, because of the short periods of confinement, a jail facility does not need as elaborate areas for recreation, libraries, exercise and other services, as required for the longer term population of prisons. (Southern Ohio Correctional Facility, Lucasville)

U.S. District Court
CELL CAPACITY
ANTIQUATED
FACILITY

Smith v. Fairman, 528 F.Supp. 186 (C.D. Ill. 1981), rev'd, 690 F.2d 122 (7th Cir. 1982) cert. denied, 103 S.Ct. 2125 (1983). Officials at the Pontiac, Illinois State Penitentiary had been ordered by a federal district court to end the practice of placing two inmates in a cell designed many years ago to house only one person. The order came as a result of an action filed by numerous former inmates and one current inmate of the institution, seeking to challenge the prison's policy of punishing inmates who refused to accept a cell with another inmate.

The district court heard a great deal of evidence on the issue of double celling at Pontiac. A number of prisoners also testified, describing the problems resulting from the double celling, such as attacks by other cell mates, loss of property, and difficulty in practicing their religion. The court made a lengthy comparison between the conditions at Pontiac and those in Rhodes v. Chapman, 101 S.Ct. 2392 (1981). The court indicated that in Rhodes, a case in which double celling was approved, the conditions were markedly different. The facility in Rhodes was new, relatively quiet and modern, and the inmates were permitted to be out of their cells on a regular basis. In this case, the prison was old and noisy, and the cells were small. Furthermore, a number of the inmates were required to spend practically all of their waking hours in their cells.

The District Court noted that Rhodes made clear the point that prisoners need not be free of discomfort. However, the court said, "deplorable and sordid conditions cannot be tolerated." The court noted that the conditions were so bad at Pontiac that even the prison's own medical director testified that the punishment meted out to prisoners was cruel and unusual. Summing up, the court said: "...the inescapable conclusion is that the Pontiac Correctional Center is overcrowded, antiquated and has inadequate facilities to provide significant and constructive correctional programs to the inmates."

The court then ordered submission of a detailed plan calling for the eventual end of the double celling practices at Pontiac. On appeal, the double celling was allowed. (State Penitentiary, Pontiac, Illinois)

U.S. District Court
CELL CAPACITY
DAYROOM
CROWDING

Vazquez v. Gray, 523 F.Supp. 1359 (S.D. N.Y. 1981). Court outlines a response to overcrowding. The United States District Court found the Westchester County Jail overcrowded and determined that the proper method of determining a remedy was to examine the causes of the overcrowding. The court considered and rejected orders which reduce bail or set a population limit for the institution. Instead, it ordered:

- 1) that no mattresses be placed on the floor for sleeping,
- 2) that no more than two persons be confined in a cell,
- 3) that the use of day rooms for housing for more than five days be prohibited, and that the court be advised where individuals are kept in such housing for more than forty-eight hours.

The court approved using dormitories as long as the use complied with state regulations and as long as the use of the dormitories did not deviate from the plan which they provided to the court. The court refused to enter a comprehensive order regarding the general conditions of the institution until the provisions of the initial order had time to be implemented. (Westchester County Jail, New York)

1982

U.S. District Court
CELL CAPACITY

Campbell v. McGruder, 554 F.Supp. 562 (D.C. D.C. 1982). Double celling of pretrial detainees is allowed but additional guards are ordered to be placed in each cellblock in which double-celling occurs. No pretrial detainee is to be confined in the company of another inmate in his cell for more than twelve hours per day. No pretrial detainee is to be double-celled for more than thirty days. (D.C. Jail)

U.S. Appeals Court
CELL CAPACITY

Glynn v. Auger, 678 F.2d 760 (8th Cir. 1982). Double-celling is not cruel and unusual punishment. The Eighth Circuit Court of Appeals held that the double-celling of an Iowa Men's Reformatory (IMR) prisoner did not violate the ex post facto clause. The court also found that the policy did not constitute cruel and unusual punishment.

After reaching the highest level of a prison incentive program, the prisoner was housed in a single cell in a remodeled housing unit of the prison. Due to an increase in the number of inmates, officials began double-celling a portion of the building. When the plaintiff objected to this procedure, he was given the choices of being double-celled, being single-celled in a smaller cell with no loss of privileges or being placed in a lower level cell with reduced privileges.

The inmate brought suit contending that the double-celling was an ex post facto increase in his punishment. The district court disagreed, also finding that the action was not a punishment. The inmate then appealed.

The Circuit Court agreed with the lower court, stating: "The constitutional prohibition against ex post facto law was designed to secure substantial personal rights against arbitrary and oppressive legislative action, and not to obstruct mere alteration in conditions deemed necessary for the orderly infliction of humane punishment." Malloy v. South Carolina, 237 U.S. 180, 35 S.Ct. 507 (1915).

The appeals court also found that the double-celling did not constitute cruel and unusual punishment. (Iowa Men's Reformatory)

U.S. District Court
CROWDING

Gross v. Tazewell County Jail, 533 F.Supp. 413 (W.D. Vir. 1982). The prison inmates' constitutional rights are violated as a result of overcrowding in a county jail. When injunctive relief was necessary to arrest the violations of constitutional rights, good faith on the part of the prison officials was no defense. The fact that state law prohibited or failed to authorize a part to alleviate a wrong did not excuse a continuing violation of fundamental guarantees. The U.S. District Court for the western district of Virginia entered an injunction against crowding in the Tazewell County Jail, finding significant differences between jails and prisons relative to overcrowding.

Responding to claims by officials that the transfer of the jail inmates would only result in overcrowding elsewhere, the court answered:

It is simply not appropriate to lump all inmates into an abstract category and assert that overcrowding exists everywhere...A comparison of inmates versus available beds is not the true index of unconstitutional overcrowding. The manifestations of such overcrowding in daily life must be considered. Hite v. Leeke, 564 F.2d 670 (4th Cir. 1976). It is abundantly clear that extreme overcrowding in a local jail is of greater practical effect and constitutional consequence than in a larger institution or a common road camp. Simply stated, all overcrowding is not equal. Perhaps more importantly, the local jail houses a high percentage of pretrial detainees...As a matter of common sense and fundamental fairness, the criminal justice system must ensure that pretrial detainees are not housed in more deprived circumstances than those accorded to convicted persons. Without doubt, the oppressive conditions of the instant case do not withstand the stricter degree of scrutiny which must necessarily be applied in situations involving pretrial detainees. Overcrowding in a local jail cannot be quantitatively equated with overcrowding in a state penal institution (Tazewell County Jail, Virginia)

U.S. District Court
CELLS
PLUMBING
KITCHEN
DINING

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). Conditions at several institutions are cited. Prisoners in the Tennessee correctional system brought action against the state challenging the constitutionality of the conditions of confinement in several of Tennessee's adult penal institutions.

The United States District Court held that certain conditions of confinement and practices amounted to cruel and unusual punishment, including: double-celling of inmates in certain units of the state penitentiary and the Nashville Regional Correctional Center; confinement of any inmate for more than one week in a cell not equipped with hot water; confinement in Block D of the Brushy Mountain Prison and the Main Building at the Nashville Center; the failure to maintain minimum sanitary conditions in food storage, preparation and service areas at certain facilities; the failure to protect inmates at several facilities; the failure to provide minimally adequate medical care for prisoners; the confinement of inmates in segregation status for more than one week without any opportunity for exercise at the prison for women. A federal master was ordered and master plans were required. (Tennessee Correctional System)

U.S. District Court
CAPACITY

Miller v. Carson, 550 F.Supp. 543 (M.D. Fla. 1982). Defendants are found in contempt for exceeding population limit. The court found the defendants individually and in their official capacity for exceeding the capacity of the jail which was set in a permanent injunction. A fine of \$10,000 was imposed and fines in excess of \$5,000 per day were authorized in the event of further violations. (Duval County Jail, Florida)

U.S. District Court
CAPACITY

Mobile Co. Jail Inmates v. Purvis, 551 F.Supp. 92 (S.D. Ala. 1982), aff'd, 703 F.2d 580 (11th Cir. 1973). Defendants are found in contempt for failing to reduce population. The court found the defendants in contempt for failing to reduce population. The court found the defendants in contempt for failing to comply with the requirements of a court order by reducing the population of the Mobile County Jail and established a daily fine of \$5,000 for each day the defendants are out of compliance with the order. (Mobile County Jail, Alabama)

1983

State Appeals Court
CELL CAPACITY

Bowen v. State Com'n of Correction, 461 N.Y.S.2d 668 (App. 1983). Double bunking is not prohibited. A New York court has determined that double bunking in jails is not per se prohibited, but rather the test to be applied was the actual conditions in the context of the eighth amendment. Double bunking is not permitted if it would be cruel and unusual, would involve unnecessary and wanton infliction of pain or would be totally without penological inspection. The court also indicated that consideration should be given to whether double bunking would cause deprivation of essential food, medical care, or sanitation, and whether it would lead to an increase in inmate violence or create other conditions intolerable for prison confinement. (Saratoga County Jail, New York)

U.S. Appeals Court
WINDOWS

Rutherford v. Pitchess, 710 F.2d 572 (9th Cir. 1983), rev'd, 104 S.Ct. 3227 (1984). Pretrial detainees class action suit brings changes. A class action suit was filed against the Los Angeles County central jail by pretrial detainees. The federal district court ordered twelve changes after a trial. Three of the changes were appealed by county officials.

The Ninth Circuit Court of Appeals decided that: low risk detainees were to be allowed one contact visit per week; detainees would be allowed to be present during searches of their cells; and the replacement of transparent windows by concrete enclosures was justified. Subsequently the United States Supreme Court reversed on the first two issues. (Los Angeles County Central Jail)

U.S. Appeals Court
CROWDING
CELL CAPACITY

Union County Jail Inmates v. Di Buono, 713 F.2d 984 (1983), cert. denied, 104 S.Ct. 1600 (1983). Overcrowded conditions are found unconstitutional. Litigation challenging severe overcrowding at the Union County Jail in New Jersey resulted in a finding by a federal district court and its special master that the overcrowded conditions at the jail were unconstitutional. The most serious concern of the court was placement of inmates on mattresses on the floor of one man cells. Rejecting the state corrections commissioner's request to resolve the problem by double bunking, the district judge ordered the convicted inmates removed from the jail and into the state prison system to which they had been sentenced (537 F.Supp. 1009).

In reversing the district court's prohibition against double bunking, the Third Circuit Court of Appeals ruled that under the "totality of the circumstances," the double bunking proposal would satisfy the constitutional prohibitions against the punishment of pretrial detainees and against cruel and unusual punishment of sentenced prisoners.

In reaching its decision, the Third Circuit relied on Bell v. Wolfish, 441 U.S. 520 (1979), in which the Supreme Court held that while detainees may not be punished, there is no punishment where confinement conditions serve legitimate nonpunitive purposes and are not excessive in relation to those purposes. In addition, the court must inquire as to whether the conditions cause inmates to endure "genuine privations and hardship over an extended period of time."

Both courts concluded that overcrowding served two legitimate purposes: effective management of a detention facility during a statewide prison overcrowding emergency and the interests of state and local government in not releasing inmates into the streets. However, the circuit disagreed with the lower court's finding that conditions would still violate the due process rights of detainees because of sheer lack of space and because the totality of conditions would in any event be unconstitutional.

According to the appeals court, double bunking would resolve the "totality" issue by providing adequate space for sleeping and would allow for reclaiming large recreation areas, permitting each inmate one hour of exercise each day in the larger space. The circuit claimed that this recreation period would offset the "cramped and overcrowded conditions" of the remaining fifteen waking hours, during which square footage per inmate varies from thirty-one to thirty-three and one half square feet. The circuit court was further persuaded that such conditions were not unconstitutional because they were convinced that the majority of detainees are confined for no more than sixty days, an assertion disputed by some local parties. (Union County Jail, New Jersey)

1984

J.S. Appeals Court
SECURITY
CROWDING

McElvann v. Prince William County, 725 F.2d 954 (N.D. Vir. 1984), cert. denied, 105 S.Ct. 88. \$210,000 is awarded to inmates held in jail. A federal jury awarded \$210,000 to approximately 7,000 inmates held in the Prince William County (Virginia)

jail between August 1980 and January 1982. Two months before, the jury had found that the facility was unconstitutionally crowded, exceeding at times its inmate capacity by 400 percent. Witnesses had testified that the facility lacked medical care and security and was unsafe. Pretrial detainees are to receive \$170,000 of the award, with the remaining funds to be divided among the sentenced prisoners held at the jail.

Meanwhile, the county has filed its own case against Virginia state corrections officials, claiming that a chronic backlog of prisoners awaiting transfer to state facilities contributed to the jail crowding. The jury had rejected county claims during the class action suit that state officials should accept or share liability, after U.S. District Judge Richard L. Williams ruled that state employees are immune under the eleventh amendment from civil damages in their role as officials. The court continued them in the case as individuals, but instructed the jury that they were entitled to claim they had acted in good faith. (Prince William County Jail, Virginia)

U.S. District Court
CAPACITY

Monmouth County Correctional Institution Inmates v. Lanzaro, 595 F.Supp. 1417 (D. N.J. 1984). Federal court sets cap on New Jersey county jail population and orders relief for prisoners. After an extensive review of the conditions at the Monmouth County Jail, the U.S. District Court for the District of New Jersey has concluded that both pretrial and sentenced inmates are being denied constitutional rights. The court placed a cap on the population of the jail and ordered relief in the areas of physical conditions, bedding, recreation, medical care, classification and visiting. (Monmouth County Correctional Institution, New Jersey)

1985

State Supreme Court
FACILITY DESIGN

Attorney General v. Sheriff of Suffolk County, Mass., 477 N.E.2d 361 (Mass 1985). The attorney general filed a complaint seeking an order to compel the sheriff to accept into his custody all pretrial detainees committed to him by courts of the Commonwealth. The sheriff then brought action seeking injunctive and declaratory relief against the mayor, city council and commissioner of corrections. The actions were consolidated, and the detainees and inmates were permitted to intervene. A single justice ordered the construction of a seventeen story jail and reported the propriety of those orders. The Supreme Judicial Court, Suffolk County held that: (1) mandamus was available to require the city council to construct the jail; (2) the order requiring fulfillment of the city's statutory obligation to provide a suitable jail did not violate the principle of separation of powers; and (3) the orders did not violate the supremacy clause. (Suffolk County Jail, Massachusetts)

U.S. District Court
CELL CAPACITY

Dohner v. McCarthy, 635 F.Supp. 408 (C.D. Cal. 1985). Inmates brought a class action suit against the director of California Department of Corrections and the prison superintendent to challenge the constitutionality of conditions of confinement, and some inmates moved for certification of subclasses. The district court held that: (1) conditions for certification of subclasses were not satisfied; (2) double-celling, overcrowding, medical care, sanitation, food, clothing, and safety did not violate the eighth amendment; and (3) no alleged liberty interest in medical and mental health treatment, entitlement to work credits, or visitation rights was violated.

Cells housing two inmates, despite the design for one inmate which contained about eleven and one-half square feet per person when the extra bed was lowered, which required the inmates to crawl over beds to travel from one end of the cell to the other, but which were adequately cleaned and ventilated, which had windows, which had a desk and storage area, and which had noise within tolerable levels were not unfit for human habitation, and, thus, the cell itself satisfied the requirements of prohibition against cruel and unusual punishment.

The factors relevant in assessing pain inflicted by a minimally sized cell for the purposes of cruel and unusual punishment clause includes the following: characteristics of prison population; prison staff's morale; amount of time the inmate has to spend in the cell each day; opportunities available for activities outside the cell; and the ability of the prison staff to be flexible and responsive to individual needs and problems created by double-celling.

The amount of time that the inmates are able to spend away from the cells is a critical factor in determining whether conditions of confinement involve wanton and unnecessary infliction of pain in violation of the cruel and unusual punishment clause. The permanence of double-celling of inmates in cells designed for a single inmate is a factor to be considered together with the size of the cells and the opportunities for inmates to leave the cells during the normal routine of the prison life in determining whether double-celling constitutes cruel and unusual punishment. (California Men's Colony, California)

U.S. Appeals Court
CELL CAPACITY

Duran v. Elrod, 760 F.2d 756 (7th Cir. 1985). Appeals court modifies consent order - allows double bunking of prisoners. In 1983 Cook County entered into a consent agreement concerning crowding and conditions of confinement at the jail. The agreement called for a halt to putting two prisoners in small (sixty-four square foot)

cells in the facility. Later, the County asked for a modification of the order due to rapid growth in the jail population. The district court not only denied the request but placed a cap on the number of prisoners which could be housed. As a result, the county was ordered to release pretrial detainees in reverse order of the size of their bonds. The cap was affirmed by the Seventh Circuit Court of Appeals (713 F.2d 292).

A study which was completed by the county showed that many of the released detainees became fugitives or were rearrested for subsequent crimes. Based on the study, the county again sought relief from the district court. The motion was again denied. However, a majority of the Seventh Circuit Court of Appeals disagreed with the lower court and allowed double occupancy of the cells.

The appeals court criticized the county for "foot-dragging" in its compliance efforts and for destroying its credibility with the lower court. The majority noted, however, that double bunking in sixty-four square foot cells is clearly constitutional. Denying the motion, they argued, would punish the citizens of the county rather than the governmental entity. The public interest in protection against the release of the accused criminals outweighs the inmates' expectations under the original consent decree. (Cook County Jail, Illinois)

U.S. Appeals Court
LIGHT
VENTILATION
SAFETY

Hoptowitz v. Spellman, 753 F.2d 779 (9th Cir. 1985). Inmates brought an action challenging conditions of confinement in a state prison system. On remand, 682 F.2d 1237, the United States District Court entered judgment finding conditions in violation of the eighth amendment and ordered relief; the state appealed. The court of appeals held that: (1) the change of administration, resulting in defendants named in the action either leaving officer or changing positions, did not warrant reopening the record on remand; (2) inadequate lighting, vermin infestation, substandard fire prevention, and safety hazards in the prison violated minimum requirements of the eighth amendment; and (3) the order for relief was overbroad in requiring provision of adequate food and clothing where there were no findings of inadequate food and clothing.

Adequate lighting is one of the fundamental attributes of adequate shelter required by the eighth amendment. The evidence that the lighting at the state prison was so poor that it was inadequate for reading, caused eyestrain and fatigue and hindered attempts to insure that basic sanitation was maintained supported the district court's conclusion that the lighting violated the eighth amendment.

The plumbing at the state prison which was in such disrepair as to deprive inmates of basic elements of hygiene and which seriously threatened inmates' physical and mental well-being amounted to cruel and unusual punishment under the eighth amendment.

Vermin infestation at the state prison, considered in light of unsanitary conditions such as standing water, flooded toilets and sinks, and dank air, was unnecessary and wanton infliction of pain proscribed by the eighth amendment.

The prisoners have a right not to be subjected to an unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief from such conditions. Substandard fire prevention at the state prison which endangered inmates' lives violated the eighth amendment.

Lack of adequate ventilation and air flow which undermined the health of prison inmates and the sanitation of the prison violated the minimum requirement of the eighth amendment.

Persons involuntarily confined by the state have a constitutional right to safe conditions of confinement. Safety hazards found throughout the state prison's occupational areas, which were exacerbated by prison's inadequate lighting and which seriously threatened the safety and security of the inmates, created unconstitutional infliction of pain.

The failure to provide adequate cell cleaning supplies in light of overall squalor at the state prison violated the eighth amendment. (State Penitentiary, Washington)

U.S. District Court
CROWDING
PLUMBING
SANITATION
SAFETY
SECURITY

Miles v. Bell, 621 F.Supp. 51 (D.C. Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy.

Most of the plaintiff's proof on the issue was based on comparisons between illness rates in dormitories and other housing methods such as cubicles or single or double cells. Testimony did show higher levels of complaints and a higher level of illness among inmates housed in the open dorms. A doctor testified that the installation of cubicles could correct many of these problems.

In fact, the defendants had corrected the situation by installing cubicles, rendering much of the pretrial detainees' complaint moot. The cubicles mitigate the spread of disease, as well as afford privacy, testified the doctor. He said that the decrease in stress would likely improve both the physical and mental states of the inmates. Although there was no testimony as to what effect the cubicles had on ventilation, the court found no violation on the matter. The barriers were likely to decrease the effects

of smoking and body odor of other inmates. The inmates complained of drafts if windows were left open and of stifling heat if left closed. The living units made up of cubicles were not challenged by the inmates.

The court also found no constitutional violation in that the number of toilets and showers did not conform to the standards set by the American Correctional Association (ACA) and by the American Public Health Association (APHA). The ACA advised one toilet and shower facility for every eight inmates, and the APHA advised one toilet for every eight inmates and one shower for every fifteen inmates. The defendants provided one toilet for every ten to fifteen inmates, and one shower for every fourteen to twenty-four inmates, depending on the housing unit. These figures were nearly twice that advised. Still, the court found no violation absent a showing that waiting in line led to either physical or mental problems. Sanitary conditions were not challenged.

Although there were certain violations of the health code in the food service in that maggots and weevils were occasionally found, the court found no constitutional violation. With regards to recreational opportunities, the inmates had enough forms of exercise and equipment available regularly.

For security reasons and for the safety of a correctional officer, he is not permitted to carry a key to the exterior doors in the housing units if he is working alone. The inmates claim this and staff shortages would prevent them from evacuating in case of a fire. The court found no violation, since the correctional officer does carry keys to exit doors that empty into adjoining units. A door in the laundry room that was supposed to be one hour fire resistant according to code, did not amount to a constitutional violation. Finally, the court found no violation in the unannounced entry into the dorms by female correctional officers, who occasionally see unclothed inmates. (Federal Correctional Institution at Danbury, Connecticut)

1986

U.S. District Court CROWDING CELL SIZE

Inmates of Occoquan v. Barry, 650 F.Supp. 619 (D.D.C. 1986). A class of inmates confined at state medium security facilities brought a federal civil rights action seeking declaratory and injunctive relief for deprivation under color of state law of fifth and eighth amendment rights. The district court held that overcrowding and systemically deficient conditions constituted cruel and unusual punishment justifying equitable relief.

Overcrowding and systemically deficient conditions at state medium security institutions constituted cruel and unusual punishment in violation of the eighth amendment justifying equitable relief of imposition of cap on a number of inmates at each facility and requirement of periodic reports indicating what steps were being taken to address deficiencies. The court ruled:

Accordingly, the Court will order that by June 1, 1987, the population of Occoquan I, II, and III shall not exceed a total of 1,281 inmates, with specific caps set for each dormitory. This total is based on a formula providing each inmate a total of 95 square feet of floor space for sleeping and day room purposes. If defendants provide all inmates with opportunities for work, vocational education or other meaningful programs to eliminate enforced idleness among the inmates, the Court will entertain a motion to modify the square footage formula to 85 square feet per prisoner. In connection with the establishment of a population cap at Occoquan, the Court will also order the defendants to provide the Court with a written report by January 15, 1987, indicating precisely how they propose to comply with the population cap.

The plaintiffs contend that an excessive inmate population, deficiencies in environmental health and safety, food services, and mental health care, alone or in combination, violate their rights guaranteed by the United States Constitution.

The classification of inmates is essential for the prison security. One critical function of classification is the efficient identification of violent, aggressive inmates and those in need of psychiatric care, so that they can be separated from the rest of the population. See, e.g., Palmigiano v. Garrahy, 443 F.Supp. 956 (D.R.I. 1977). The classification system at Occoquan appears to be dangerously overtaxed by the crush of inmates in need of classification.

Idleness among inmates results in a variety of problems, including heightened tension, frustration, and violence. The lack of adequate programs can also have an adverse impact on inmates' chances for parole. There was no disagreement among the expert penologists that inmates should be engaged in some productive enterprise, properly supervised. Nonetheless, enforced idleness presents a major problem at Occoquan.

The correctional officers do not supervise properly the sleeping areas of the dormitories. Correctional officers do not make patrols on a frequent and regular basis, nor are officers stationed in the rear of each dormitory so as to facilitate supervision of the living area when inmates are present.

Medical services experts agreed that deficiencies in the medical care delivery system at Occoquan exist which are likely to cause harm to the inmates. These deficiencies are systemic in nature, concerning staffing, facilities, and procedures. (Lorton Correctional Complex, District of Columbia)

U.S. District Court
HYGIENE
PLUMBING
SANITATION

Jackson v. Gardner, 639 F.Supp. 1005 (E.D. Tenn. 1986). Inmates of a county jail brought a Section 1983 action challenging the constitutionality of conditions of confinement. After resolution of some of the conditions complained of, and stipulation as to others, the district court held that: (1) Prison conditions under which an average inmate was confined twenty-four hours a day in a physically dilapidated, insect infected, dimly lit, poorly ventilated area averaging under twenty square feet per inmate, without any available recreation or diversion other than some reading or letter writing, sharing a shower which might not have hot water with twelve to fourteen others, sharing a sink and toilet with three or four others, and possibly sleeping on an unsanitary floor, or within inches of a toilet, in clothing which may not have been recently washed, constituted cruel and unusual punishment; (2) In order for the county jail to provide constitutionally acceptable confinement, population at the main jail facility had to be reduced, regular out-of-cell recreation had to be provided, visitation increased, and fire escape plans had to be communicated to inmates and prominently displayed in corridors at all times. (Sullivan County Jail, Tennessee)

U.S. District Court
SEPARATION
CROWDING

Reece v. Gragg, 650 F.Supp. 1297 (10th Cir. 1986). A pretrial detainee representing a class of all present and sentenced inmates held in the county jail brought action seeking injunctive relief to require that operation of the jail under present conditions cease. The district court held that: (1) the current operation and condition of the county jail violated the due process clause of the fifth and fourteenth amendments and the eighth amendment's prohibition against cruel and unusual punishment, and (2) due to unconstitutional conditions at the jail, an injunction was warranted, but would be stayed under conditions outlined by court.

To the extent that the county jail is unable to segregate pretrial detainees and sentenced inmates, the higher standard applicable under the due process clause, rather than the eighth amendment, must be met by the entire facility.

Jail overcrowding for the purpose of allowing the county to house more inmates without creating more jail space is an impermissible justification for resulting violations of due process and prohibition against cruel and unusual punishment. Severe overcrowding combined with lack of area for exercise, lack of separate dining area, inadequate ventilation, inadequate temperature control, and antiquated and unsanitary plumbing at the county jail violated due process clauses of the fifth and fourteenth amendments and ran afoul of the eighth amendment's proscription against cruel and unusual punishment. (Sedgwick County Jail, Kansas)

U.S. Appeals Court
LIGHT

Shelby County Jail Inmates v. Westlake, 798 F.2d 1085 (7th Cir. 1986). Conditions of the Shelby County Jail in Indiana did not violate the constitutional rights of inmates, says a U.S. Appeals Court. Inmates at the Shelby County Jail (SCJ) filed a suit alleging that the totality of conditions and practices at SCJ violated their constitutional rights. The inmates claimed the jail's twenty footcandles of illumination did not meet minimum standards. The county's expert, however, took readings in the courtroom which revealed eighteen footcandles at the judge's bench.

U.S. District Court
FACILITY DESIGN
CELL CAPACITY

Ruiz v. McCotter, 661 F.Supp. 112 (S.D.Tex. 1986). The Texas Department of Corrections was in contempt of court for failure to afford sufficient single-occupancy cells, in failing to assign housing to prisoners according to their respective custody classifications, in failing to maintain a specified number of personnel, and to deploy staff in the housing areas, in failing to employ a substantial number of health care professionals, in failing to meet the needs of the physically handicapped, in failing to afford prisoners in administrative segregation appropriate housing facilities, and in failing to build and properly equip recreation yards and gymnasiums. On the whole, the court found, TDC had been habitually and inexcusably dilatory in complying with the orders in question. The court noted that contempt represents more than delay in performance or lack of perfection. It is, instead, failure to accomplish what was ordered in meaningful respects. Defendants may defeat finding of contempt by demonstrating that they employed, in good faith, utmost diligence in discharging their responsibilities. Prison inmates were not required to show that Texas Department of Corrections had violated the Eighth Amendment or to develop a method by which the Department could achieve compliance with consent decree in order to support a finding of contempt for violating the decree. Rather, inmates were required to establish by clear and convincing evidence that the Department had inappropriately mixed custody classifications or had housed prisoners not in minimum custody status in dormitories, and had done both, in violation of stipulations forming bases for district court orders. Motions to modify so as to alleviate or eliminate conditions or restrictions imposed by prior court order require a clear showing of grievous wrong evoked by new and unforeseen conditions. Texas Department of Corrections' alleged change in philosophy to a belief that dormitories provide adequate, secure housing for women prisoners in medium and close custody classifications was not sufficient to require modification of stipulations incorporated in court orders requiring inmates to be housed with inmates of like classification, in light of the fact that certain women inmates had been moved to cell housing, and conflicting testimony regarding appropriateness of dormitory housing for women requiring medium or close custody. (Texas Department of Corrections)

U.S. Appeals Court
CROWDING

Akao v. Shimoda, 832 F.2d 119 (9th Cir. 1987), cert. denied, 108 S.Ct. 1301. A Federal lawsuit alleging overcrowding was brought by three prisoners in Hawaii. Finding no eighth amendment violation, the lawsuit was dismissed by the district court. The decision was reversed by the U.S. Court of Appeals, which concurred that an allegation of overcrowding without additional cruel and unusual treatment does not state a claim. However, it found these prisoners had alleged more. The prisoners claimed that because of the increased population, there was "an increase in stress, tension, communicable diseases, and a high increase in confrontations between inmates." (Oahu Community Correctional Center, Hawaii)

U.S. District Court
CROWDING

Benjamin v. Malcolm, 659 F.Supp. 1006 (S.D.N.Y. 1987). Temporary relief was granted to New York City correctional facilities to allow them to cope with the recent increase in population. However, "no further requests for modification will be granted regardless of foreseeable or unforeseeable problems which may arise." (Brooklyn House of Detention for Men and Queens House of Detention for Men)

U.S. Appeals Court
CELL CAPACITY
CROWDING

Cody v. Hillard, 830 F.2d 912 (8th Cir. 1987), cert. denied, 108 S.Ct. 1078. An inmate brought a class action under a civil rights statute complaining of overcrowding and substandard living conditions. The United States District Court for the District of South Dakota ordered an end to the practice of double-celling of inmates; prison officials appealed. The Court of Appeals initially affirmed (799 F.2d 447). After granting a petition for rehearing en banc, the U.S. Court of Appeals, Eighth Circuit, held that the practice of double-celling did not evince the "wanton and unnecessary infliction of pain" necessary to constitute a violation of the Eighth Amendment. On appeal, prison officials contended that the trial court erred in finding that double-celling of inmates at the South Dakota State Prison (SDSP) violates the eighth and fourteenth amendments to the United State Constitution. They also claimed that the district court erred in using the "rated capacities" of the American Corrections Association (ACA) as a reference for measuring the permissible capacity of the prison under the eighth amendment. The appeals court reversed the district court's order with respect to double-celling. According the appeals court, the U.S. Supreme Court made clear in Rhodes v. Chapman that "...when the conditions of confinement compose the punishment at issue," those conditions "must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." The Supreme Court referred to conditions that are "totally without penological justification," at 346, 101 S.Ct. at 2399 (quoting Gregg v. Georgia, 428 U.S. 153, 183, 96 S.Ct. 2909, 2929, 49 L.Ed.2d 859 (1976), as the kind of conditions that violate the eighth amendment. According to the appeals court, "...as Rhodes and Whitley make clear, the Eighth Amendment leaves very broad latitude to the states in the administration of their prisons. '[C]onditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.' Rhodes, 452 U.S. at 347, 101 S.Ct. at 2399. Moreover, the federal courts traditionally have adopted a broad hands-off attitude toward problems of prison administration." The court cited Procunier: "...Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." Procunier v. Martinez, 416 U.S. 396, 404-05, 94 S.Ct. 1800, 1807. 40 L.Ed.2d 224 (1974)(footnotes omitted). The appellate panel concluded that, "all of these observations aptly fit this case....Even granting that the District Court's factual findings are correct, double-celling at SDSP simply does not evince the 'wanton and unnecessary infliction of pain' necessary to constitute a violation of the Eighth Amendment. Rhodes, 452 U.S. at 347, 101 S.Ct. at 2399....The record in this case falls far short of supporting the district court's conclusion that the line drawn by Rhodes has been crossed by double-celling at SDSP. Accordingly, there is no constitutional basis for the district court's remedial order with respect to double-celling." The court also noted that "We have found nothing in the record or the District Court's findings of fact to persuade us that our conclusions regarding double-celling generally should be different with regard to the protective custody area of the prison."

The appellate court noted that the district court's remedy in its final order was based on compliance with ACA rated capacities, which in turn were based on recommendations by the South Dakota penitentiary authorities. "The Supreme Court has explicitly rejected the proposition that such standards establish a constitutional norm. In Bell v. Wolfish, the Court stated that 'while the recommendations of these various groups [such as ACA] may be instructive in certain cases, they simply do not establish the constitutional

minima, rather, they establish goals recommended by the organization in question.' 441 U.S. 520, 543-44 n. 27, 99 S.Ct. 1861, 1876 n. 27, 60 L.Ed.2d 447 (1979). In *Rhodes*, the court quoted the foregoing statement from *Wolfish* and further observed in regard to eighth amendment claims that 'generalized opinions of experts cannot weigh as heavily in determining contemporary standards of decency as "the public attitude toward a given sanction.'...We need not consider the propriety of the District Court's final order mandating relief and its reference to ACA rated capacities in view of our conclusion that on the record before us double-celling at SDSP does not violate the eighth amendment."

The appeals court reversed the order of the district court concerning double-celling, left undisturbed the affirmance of the district court's order rejecting the protective custody inmates' challenge to the additional restrictions attendant to their protective custody, and remanded the case to the district court and directed it to vacate its order requiring SDSP to cease double-celling and to bring its inmate population within ACA guidelines. (South Dakota State Penitentiary)

U.S. District Court
CELLS
CROWDING

Feliciano v. Colon, 672 F.Supp. 627 (D. P.R. 1987). An order that would give inmates 35 square feet of living space was refused modification by a federal court. Issued eight years ago in *Feliciano v. Barcelo*, 497 F.Supp. 14 (D. P.R. 1980), was an order requiring that each inmate be provided with at least 35 square feet of living space. A federal court denied Puerto Rican prison authorities' request that it modify this order. Refusing to accept the argument that all persons presently incarcerated would present a danger to the community if released, the court stated that prison authorities had failed to explore alternatives which might include the transfer of inmates to federal prisons, temporary housing, or halfway houses. Since prison authorities did not notify the court of predictable problems in compliance when the inmate population had increased faster than earlier estimates and it became clear the estimates were too low, this did not justify modification of the order. (Puerto Rico System)

State Court
ENVIRONMENTAL
IMPACT

Jensen v. Webb, 520 N.Y.S.2d 971 (A.D. 3 Dept. 1987). A state court ruled that the prison overcrowding crisis facing New York City fell within the definition of an emergency situation, justifying an exception to the requirement of an Environmental Impact Statement and refused to enjoin construction on the basis of any of the other alleged violations. Because the city had failed to file an Environmental Impact Statement as required by state and city law, had failed to comply with a city land use review procedure, had failed to obtain certain permits and were violating the federal Clean Water Act, 33 U.S.C. Sec. 1251, in operating a septic system, a neighborhood committee asked a New York Court to enjoin the construction of a correctional facility. The court ordered a trial, however, on the claimed violations of the other statutes. (New York City Department of Corrections)

U.S. District Court
CROWDING
CELLS
FACILITY DESIGN

Morales Feliciano v. Hernandez Colon, 672 F.Supp. 627 (D. Puerto Rico 1987). Puerto Rican prison authorities moved to modify stipulation and an order that they provide each prisoner with at least 35 square feet of living space. The district court held that: (1) prison authorities were not entitled to relief under subsection of federal rule allowing modification on the ground that changed circumstances would make further compliance with order unjust; (2) prison authorities failed to show that compliance would result in pernicious consequences, and failed to show changed circumstances warranting relief; and (3) building project undertaken to increase dramatically available beds for housing did not entitle prison authorities to relief. The possible release of prisoners by Puerto Rican prison authorities as a result of compliance with a court order that they provide each prisoner with at least 35 square feet of living space was not a "pernicious consequence" of compliance and did not entitle them to relief from order under Rule 60(b)(6); there was little factual support for assertion that all persons presently incarcerated in Puerto Rico would present danger to the community if released, argument had an undertone of disingenuity, and compliance would not interfere with efforts of Commonwealth as to enforcement of criminal law or any other policy decision of that entity. The court ruled that prison authorities should have known that the population projection figure on which they relied was, in all probability, inaccurate, and, even if they did not properly assess information available at that time, they certainly knew by the end of 1986 that they had drastically underestimated the actual rate of growth, but did not make the motion for relief from the stipulation, informally apprise the court of predictable problems in compliance, solicit assistance of monitor or seek discussions with plaintiffs' counsel. (Puerto Rico System)

U.S. District Court
PLUMBING
NOISE

Nilsson v. Coughlin, 670 F.Supp. 1186 (S.D.N.Y. 1987). Inmates stated a claim under the Eighth Amendment for cruel and unusual punishment. The inmates alleged there was raw sewage in the cells, unsanitary dining facilities, a constant level of noise that was physically harmful, a lack of meaningful vocational, educational or recreational programs, and a host of other conditions. The federal court ruled that a fair inference could be drawn from the pro se complaint that the prison officials were grossly negligent in supervising or, alternatively, in promulgating policies, that caused unconstitutional conditions. (Sullivan Correctional Facility, New York)

U.S. Appeals Court
CELL CAPACITY
SPECIAL CELL

Tyler v. Black, 811 F.2d 424 (8th Cir. 1987), cert. denied, 109 S.Ct. 1760. On appeal, a federal court held that: (1) the mass transfer of inmate to a segregation unit during a period of prison unrest did not violate due process, but (2) double celling of inmates in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of Eighth Amendment. The mass transfer of inmates to a segregation unit during a period of prison unrest did not violate due process, where inmates were given posttransfer hearings, the warden perceived move as a necessary emergency security measure, no punitive purpose was involved, and the transfers were purely temporary administrative segregations. However, double celling of inmates in segregation unit in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of the Eighth Amendment; inmates with history of assaultive behavior were placed in closed cells for up to 23 hours a day for a period of several months. (Missouri State Penitentiary, Special Management Facility)

1988

U.S. District Court
CROWDING

Albro v. Onondaga County, N.Y., 677 F.Supp. 697 (N.D.N.Y. 1988). The alleged offender is afforded protection by a due process clause instead of the Eighth Amendment, which prevents holding a detainee under conditions that would be equal to punishment. A violation of due process was found to exist when crowded conditions were found at a pretrial detention facility, causing many detainees to sleep on cots in the walkways and creating a hazard to both detainees and staff. There was no operational compensation for overcrowding conditions such as adequate exercise time, vocational training, or free time in the dayroom or other open space. Detainees frequently spent only a free hour on a walkway or in "passive" recreation and were confined to their cells at least 23 hours a day. The court found correctional staff insufficient to safely respond to duties. Further, the court also concluded that inmates "have ready access to weapons through the dismantling of their cots." The capacity of the facility was capped by the court. Daily fines were levied on the county as an appropriate remedy for continuing overcrowding at the detention facility whenever the inmate population exceeded its capacity for four days or more. The county was ordered to pay \$1,000 per day if the population reached 213-217, up to \$10,000 daily if the population goes over 247. Even though the plaintiffs had withdrawn the motion for contempt, the court kept the power to punish violations that may have occurred, or might occur in the future. (Public Safety Building)

U.S. Appeals Court
CROWDING
CELL CAPACITY

Lyons v. Powell, 838 F.2d 28 (1st Cir. 1988). A pretrial detainee brought action alleging violation of his civil rights. The federal district court dismissed complaint for failure to state cause of action, and appeal was taken. The appeals court held that the pretrial detainee's allegations that he was confined to a cell for 22-23 hours per day for a 27-day period, and was forced to sleep on a floor mattress, were sufficient to state a Section 1983 cause of action on ground of deprivation of liberty without due process. The court was troubled by the inmate's contention that he was confined to a cell for 27 days with another inmate, during which time he was forced to sleep on a mattress on the floor of the cell, and his claims that the mattress nearly covered the floor of his cell, and placed appellant in a position which was in close proximity to the open toilet in the cell. According to the court, the U.S. Supreme Court has held that "double-bunking," that is, placing two inmates in a cell presumably intended for a single inmate, does not constitute punishment. This practice, then, does not constitute a per se violation of a pretrial detainee's due process rights. Bell v. Wolfish, supra, 441 U.S. at 541, 99 S.Ct. at 1875. The Court left open the possibility, however, that "confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment..." Id. at 542, 99 S.Ct. at 1875-1876. In Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981), the Second Circuit held that double-bunking of pretrial detainees was constitutionally permissible for a period of no more than 15 days, but that the use of a floor mattress constituted punishment "without regard to the number of days for which a prisoner is so confined." According to the court, "Based on the foregoing considerations, we conclude that the district court incorrectly dismissed appellant's complaint for failure to state a cause of action." The court ruled, however, that the pretrial detainee was not denied access to court. The detainee was given periodic access to a law library, and was not constitutionally entitled to also receive assistance from "persons trained in the law." (New Hampshire State Prison)

State Appeals Court
RECREATION
AREAS

N.Y. State Com'n of Correction v. Ruffo, 530 N.Y.S.2d 469 (Sup. 1988). The New York State Commission of Correction went to court seeking an order compelling a county and its sheriff to build an outdoor recreation area for inmates of the county jail and to transport inmates to the county's other jail facility for daily recreation while the new outdoor recreation area is being built. New York regulations, the Commission argued, provide that inmates be allowed to use recreation areas for a minimum of one hour a day and further requires that county jails provide

an outdoor play area of a minimum of 1500 square feet to enable prisoners to engage in basketball, jogging, handball, weightlifting, calisthenics and other active recreation. The court found that the Commission had no authority to compel the county to construct a new facility. Further, the sheriff was not authorized by law to build a new jail or to raise taxes to fund a major renovation of the old one. The court did, however, grant the Commission an order directing the sheriff to transport prisoners to the county's other jail each day and allow each inmate one hour of outdoor recreation, not including travel time. (Broome County Jail, Binghamton, New York)

U.S. Appeals Court
CELL CAPACITY

Plyler v. Evatt, 846 F.2d 208 (4th Cir. 1988), cert. denied, 109 S.Ct. 241. The State requested modification of a consent decree so as to allow double-celling at new prisons and also appealed a court-ordered release of 700 inmates. This request was denied by the district court. The federal appeals court found that the State had made a good-faith effort to comply with the consent decree and had faced an unanticipated increase in the prison population and that it was an abuse of discretion not to allow double-celling--ordering the district court to modify the consent decree to allow double-celling at the five new facilities. The appeals court noted that the state had embarked on an aggressive program of new prison construction, involving the spending of over one-hundred million dollars, as well as instituting early release programs to alleviate overcrowding. The court also noted that there were potential dangers from the early release of high risk inmates- dangers which "far outweigh any imposition on the inmates from double-celling" in some of the "modern, air-conditioned facilities" which have been constructed. The court retained jurisdiction to order further remedies should the double-celling result in any unconstitutional conditions of confinement. (South Carolina Department of Corrections)

U.S. Appeals Court
FACILITY DESIGN

Rowland v. U.S. Dist. Court for N.D. of Cal., 849 F.2d 380 (9th Cir. 1988). Prisoners brought a lawsuit seeking to correct prison conditions. The federal district court issued a permanent injunction and ordered a monitor to inspect a new prison; prison officials sought a writ of mandamus to vacate the order. The appeals court held that the district court was without jurisdiction to authorize a monitor to inspect new prison because the facility was not covered by its permanent injunction correcting various facility-specific unconstitutional conditions at the old facility. To establish whether violations existed at the new facility, a new lawsuit must be brought. The court noted that removing segregated prisoners from the old facility was one way for prison officials to satisfy the purpose behind the injunction by removing prisoners from the facility that was found to be old, overcrowded and dirty and could not have been to subvert or undermine the permanent injunction. (New Folsom Prison, California)

1989

State Supreme Court
VENTILATION

Bedell v. Schiedler, 770 P.2d 909 (Or. 1989). An inmate at a women's corrections center petitioned for writ of habeas corpus, alleging that failure to provide adequate ventilation and circulation of clean air violated her constitutional rights against cruel and unusual punishment. The Marion County Circuit Court allowed a motion to dismiss the petition for lack of subject matter jurisdiction. On appeal, the court of appeals affirmed. The State Supreme Court, reversing and remanding, found that a hearing was required on the merits of the inmate's allegations.

The court said that the inmate's allegations that she was unnecessarily suffering clogged sinuses, severe headaches, dry and irritated skin, and a sore throat--and that those health problems would continue unless ventilation problems were remedied--presented unresolved issues of fact "requiring immediate judicial scrutiny." It was no basis for dismissal that she had failed to allege: 1) that she had not suffered her ailments before confinement, 2) that her physical ailments are linked medically to the alleged lack of ventilation, or 3) that she had unsuccessfully sought and undergone medical treatment to alleviate her ailments. These three allegations were not required, since they were all defenses that the prison might have raised but did not. "Construed liberally," the court noted, the inmate had alleged that the "environment in which she is confined unnecessarily subjects her to serious health hazards. If prisoners are entitled to reasonable and necessary medical care, it reasonably follows that they also are entitled to an environment that does not unnecessarily subject them to serious health hazards." (Oregon Women's Correctional Center)

U.S. District Court
CROWDING
RECREATION AREAS

Essex County Jail Inmates v. Amato, 726 F.Supp. 539 (D. N.J. 1989). The inmates of a county jail sued the county seeking imposition of sanctions for the violation of a consent judgment under which the county was to abide by overall population limits and population limits within sections of the jail, and to afford each inmate an opportunity for one hour of recreation per day. The district court found that the imposition of fines for overcrowding based upon the agreed upon figure of \$100 per day per inmate was warranted and the fine for the failure to provide recreational facilities, based on \$20 per day per inmate affected, was warranted despite the claim that exercise

opportunities could not be provided because of security concerns that prevented the installation of equipment in each tier. The federal court had authority to impose sanctions for violations of the agreement, embodied in the consent judgment, between inmates in the county prison and the county providing for maximum levels of occupancy of the prison and one hour of recreational opportunities per day per inmate as part of the court's general power to interpret and enforce contracts. A prior contempt finding against the prison for violating the maximum inmate population cap established by an agreement between inmates and the prison which was embodied in the consent judgment did not nullify a continued noncompliance with the order by the county. (Essex County Jail, New Jersey)

U.S. Appeals Court
DORMITORIES
PROTECTIVE
CUSTODY
CAPACITY

Fisher v. Koehler, 718 F.Supp. 1111 (S.D.N.Y. 1989), aff'd., 902 F.2d 2 (2nd Cir. 1990). Prison inmates brought a class action against prison officials and others, challenging conditions of confinement as violative of their rights under the federal constitution. Following a finding, 692 F.Supp. 1519 (S.D.N.Y. 1988), that violence at the prison reached a level which violated the eighth amendment, the defendants were given the opportunity to submit a reasonable plan for the court's consideration. The district court found that the proposed plan to reduce violence by staff and inmates against inmates to comply with the eighth amendment would be adopted, with some modifications. The prison officials would be allowed to house protective custody inmates in dormitories in light of plan for exclusion from protective custody of inmates with a significant history of violence and for cell housing of inmates whose vulnerability or history of violence required their separation. Before the court would limit the prison population by prohibiting the housing of more than 50 inmates in a dormitory, which would have required the displacement of approximately 500 inmates, the Department of Corrections would be given an opportunity to reduce the level of violence at the prison to a constitutionally acceptable level by addressing major sources of violence other than crowding. The prison officials were entitled to an opportunity to establish that periodic, rather than permanent, presence of an officer would prove sufficient to prevent violence in dormitories consisting of inmates with little or no history of assaultive behavior.

The appeals court found that conditions at the prison violated the eighth amendment, and the district court's remedy was properly formulated. (Correctional Institute for Men, New York City, New York)

U.S. District Court
CAPACITY
CROWDING
FIRE SAFETY
SANITATION

Inmates of Occoquan v. Barry, 717 F.Supp. 854 (D.D.C. 1989). Inmates confined at a state prison brought a civil rights action seeking declaratory and injunctive relief. The judgment for the inmates, 650 F.Supp. 619, was vacated and remanded, 844 F.2d 828. Upon remand, the district court found that the prison conditions violated the inmates' eighth amendment rights, even though the District of Columbia had implemented a number of new procedures. The housekeeping manual was not followed, fire inspection was lacking, new evacuation plans had not been posted and proper training had not occurred. Sick call had been increased to five days from three days but had not cured other chronic problems. New procedures for medical problems, and new procedures for medical records transfers and follow-up had either not been implemented or had failed to work. The court also found that the housing of "protective custody" inmates in a block with punitive segregation inmates violated the protective custody inmates' eighth amendment rights, and inmates with mental health problems could not be housed with punitive segregation inmates. Officials at the medium security federal prison were prohibited from exceeding the current population at the facility pending renovation, and they were required to submit a written report on their proposals for correcting the constitutional violations in areas of sanitation, bathroom facilities, fire safety, health care, and staffing. The court of appeals also found error with the court's "continuous resort to the standards articulated by professional agencies in evaluating the constitutionality of the conditions at Occoquan." (District of Columbia's Occoquan Facility, Lorton Correctional Complex)

U.S. District Court
CAPACITY
DOUBLE CELLING
CONSENT DECREE

Monmouth County Corr. Inst. Inmates v. Lanzaro, 717 F.Supp. 268 (D. N.J. 1989). Inmates brought an action challenging the conditions of confinement in a county correctional facility which housed both pretrial detainees and sentenced inmates. The plaintiffs specifically sought to reinstate the prohibition against double bunking in Wings A and B, contained in the consent judgments of 1985 and 1986, and to reduce the total inmate cap by 24 beds thereby setting the maximum inmate male capacity of 536. Following an issuance of a remedial order, and an order of modification on the report of a special master, the public advocate filed a motion that would be treated as a request for modification. The district court found that an overall cap on male inmates was adopted, rather than caps on specific wings. An order of modification was not intended to modify the agreement not to double bunk specific wings; and the parties' agreement not to use the county correctional facility to its full capacity was not the basis upon which the district court had to modify its factual conclusion regarding the male population cap for the facility, in the action challenging the conditions of the facility, in absence of changed facts,

circumstances or law. The district court set a total cap of 304 male inmates for the county correctional facility, rather than adopting the master's initial recommendation regarding caps for specific wings of the facility, as a remedy in the action. The district court's decision regarding the conditions of the facility was not intended to modify the parties' agreement not to use wings to what might be their full capacity, and would be amended to omit references indicating the propriety of partial double bunking in wings, where the correctional officials indicated that the wings had never been double bunked, that they did not intend to double bunk them, and that they did not ask to do so, and the officials did not seek relief from the consent judgment pursuant to which the parties agreed to prohibit double bunking of those wings. (Monmouth County Jail, New Jersey)

U.S. Appeals Court
CAPACITY
CELL SIZE
COURT ORDER

Morales-Feliciano v. Parole Bd. of Com. of P.R., 887 F.2d 1 (1st Cir. 1989), cert. denied, 110 S.Ct. 1511. The U.S. Supreme Court has refused to overturn a lower court decision which held the Commonwealth of Puerto Rico in contempt for keeping prisoners confined in less than 35 square feet of space in violation of a 1987 court order. The U.S. Court of Appeals had affirmed the decision and found that the civil contempt order was appealable. The Commonwealth's compliance was not so substantial as to invalidate a finding of contempt, and the Commonwealth's good-faith efforts to comply with the remedial order did not excuse the noncompliance. The sanction of \$50 per excess prisoner per day, with a rate increase of \$10 per month, was not unlawfully high, and the Commonwealth was not entitled to an oral hearing prior to the entry of the contempt order. (Commonwealth, Puerto Rico)

1990

U.S. District Court
CELL CAPACITY
DOUBLE CELLING
DINING

Harris v. Murray, 761 F.Supp. 409 (E.D. Va. 1990). An inmate filed an action under a federal civil rights statute, asserting numerous allegations relating to conditions of confinement. On the defendants' motion for summary judgment, the district court found that the dismissal of the inmates various claims was warranted. The inmate's claim that he was occasionally forced to stand while eating due to insufficient seating space in the dining area did not state sufficient facts to warrant a finding of cruel and unusual punishment. Finally, the court found that the double ceiling of prisoners does not amount to an Eighth Amendment violation where other prison living conditions are constitutionally adequate; although a cell is designed for one inmate, double or even triple occupancy is not in itself cruel and unusual punishment. (Nottoway Correctional Center, Virginia)

U.S. District Court
COURT ORDER

Shaw v. Allen, 771 F.Supp. 760 (S.D. W.Va. 1990). A class of inmates brought a petition for contempt, alleging that prison officials were in contempt of previous orders requiring that conditions of the county jail be in compliance with constitutional standards. The district court found that the failure of officials to bring the conditions in the county jail up to constitutional standards warranted appointment of a receiver to operate the jail. According to the court, there was a dismal history of noncompliance and allowing additional time for compliance would only likely result in additional injunctions or contempt proceedings and would offer little hope of anything other than further confrontations and delays. (McDowell County Jail, West Virginia)

U.S. Appeals Court
DOUBLE CELLING
ANTIQUATED
FACILITY
CROWDING

Tillery v. Owens, 907 F.2d 418 (3rd Cir. 1990). An inmate brought an action challenging conditions of confinement at the state correctional institution. The U.S. District Court granted relief and the state and prison officials appealed. The appeals court, affirming the decision, found that the evidence supported a determination that double-celling violates the eighth amendment in view of other conditions to which inmates were subjected, and an order banning the double-celling was within the district court's discretion given its determination that the institution was overcrowded, that the lighting, ventilation, plumbing, showers, and fire safety provisions fell below constitutional norms, that violence and insecurity were pervasive, that medical and mental health care were constitutionally deficient, that inmates had limited opportunities for recreation outside their cells, that inmates were double-celled for long periods of time, and that inadequate screening before double-celling of inmates resulted in "fatal pairings". It was not necessary that there be a showing that double-celling itself caused increased violence, disease, and other negative conditions. The totality of conditions within the institution must be considered in determining whether conditions of confinement violate the eighth amendment. The constitutionality of double-celling had to be analyzed in context of the district court's determination, well supported by record, that almost every element of physical plant and provision of services at the institution fell below constitutional norms. The district court order requiring state and local authorities to cease double-celling inmates in cell blocks by a specified date, to remedy the eighth amendment violation, was within its discretion, and did not impermissibly invade the state's prerogative in view of the option available of hiring more guards so that empty tiers at the institution could be used, as an alternative to transferring inmates to other institutions. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
CELL CAPACITY
SANITATION
VENTILATION

Williams v. White, 897 F.2d 942 (8th Cir. 1990). An inmate proceeding in forma pauperis brought a pro se complaint against the prison superintendent under Section 1983. The U.S. District Court dismissed, and the prisoner appealed. The appeals court, vacating and remanding with instructions, found that the inmate's claim was not frivolous. The prisoner asserted he was placed in solitary, punitive confinement for no articulated reason and without a hearing and alleged that he was placed in a single cell with another prisoner with no hot water and no ventilation or air from outside and that he was required to use a mattress infested with bugs and insects. The prison superintendent can be liable under Section 1983 for operating the prison with unsanitary and inhumane conditions and can be directly liable if he fails to properly train, supervise or control subordinates. Dismissals under the in forma pauperis statute on the ground of frivolity are to be made early in the proceedings, before the service of the process on the defendant and before burdening the defendant with the necessity of making a responsive answer under Rules of Civil Procedure. (Missouri)

1991

U.S. Appeals Court
CONSENT DECREE

Kendrick v. Bland, 931 F.2d 421 (6th Cir. 1991). Inmates sought to have prison officials held in contempt for violation of a consent decree. The U.S. District Court denied the motion, and the inmates appealed. The court of appeals found that the district court properly refused to hold the prison officials in contempt in the absence of a showing of institutionwide violations, but remand to district court was required for clarification of the term "available" as used in the provision of the consent decree requiring that inmates be present during searches of their cells if the inmates are "available". In a certain sense, all inmates are available because they are within the institution but, in another sense, they may not be available if they are working in prison industries, are in classrooms, or are at meals. (Kentucky State Reformatory, LaGrange, Kentucky)

U.S. District Court
CONSENT DECREE
HANDICAPPED

Kroll v. St. Charles County, Mo., 766 F.Supp. 744 (E.D. Mo. 1991). On a motion to hold a county in contempt of court for failing to comply with the provisions of a consent order, the district court found that the county courthouse, government building and administration building violated accessibility standards and federal handicapped laws. The buildings lacked electronic doors, sufficient space to accommodate wheelchairs, and ramps or elevators. If the county failed to fund improvements to bring the courthouse, government building and administration building into compliance with accessibility standards and federal handicapped laws, the court would consider an imposition of a property tax increase of 25 cents per one hundred dollars of assessed valuation on all property located in the county for a period of ten years. It might also enjoin a roll back of local taxes. (St. Charles County, Missouri)

U.S. Appeals Court
SANITATION

McCord v. Maggio, 927 F.2d 844 (5th Cir. 1991). A state prisoner brought a suit against a warden for alleged violation of Eighth Amendment rights arising from prison conditions. The U.S. District Court entered judgment in favor of the warden. The court of appeals, affirmed in part and reversed and remanded in part. On remand, relief was again denied, and the prisoner appealed. The court of appeals found that the prisoner's Eighth Amendment rights were violated by his repeatedly having to sleep and live in sewage and foul water, and remand was necessary for consideration of whether an "extraordinary circumstances" defense applied and whether causation and significant injury were shown. (Louisiana State Penitentiary)

U.S. Appeals Court
CONSENT DECREE

Picon v. Morris, 933 F.2d 660 (8th Cir. 1991). A prisoner sought relief from dismissal of a consent decree so that he could file an action for civil contempt to enforce the decree regarding the use of emergency segregation cells. The United States District Court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the prisoner was entitled to proceed with the action. The fact that the district court had found compliance with the decree and entered a dismissal order did not justify the denial of the prisoner's motion for release. The compliance finding had been issued based on allegedly erroneous statements by prison officials that the cells in which the prisoner was housed had been abandoned. (Missouri Training Center for Men)

U.S. Appeals Court
COURT ORDER
CROWDING

Williams v. McKeithen, 939 F.2d 1100 (5th Cir. 1991). A preliminary injunction was issued by the United States District Court which ordered Louisiana sheriffs to remove prisoners held in parish jails pursuant to contracts with the District of Columbia and Immigration and Naturalization Service (INS). The sheriffs and the District appealed. The appeals court, reversing the decision, found that the All Writs Act did not authorize a preliminary injunction to remove all prisoners held in Louisiana parish jails. Even though the sheriffs had previously agreed to limit the number of prisoners to specified population limits, there was no finding that any parish jail was housing inmates in excess of the

limits, or that any jail was not accepting or was unable to accept Louisiana state prisoners. The injunction required substantial, uncompensated change in parish jails' existing operations, and the injunction did not have a close nexus to the underlying order which limited populations. Even if a preliminary injunction was authorized, the injunction was invalid where no attempt was made to provide adequate notice of hearing to the District or the sheriffs. (Louisiana)

1992

U.S. Supreme Court
CONSENT DECREE
DOUBLE CELLING

Rufo v. Inmates of Suffolk County Jail, 112 S.Ct. 748 (1992). A county sheriff filed a motion to modify a consent decree requiring construction of a new jail, including a request to house inmates in single cells in the newly-opened facility. The U.S. District Court denied the motion, and the sheriff appealed. The court of appeals affirmed, and certiorari was granted. The U.S. Supreme Court found that the "grievous wrong" standard does not apply to a request to modify a consent decree stemming from institutional reform litigation. The Court also found that a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants a revision of the decree. If the moving party meets that standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstances. The party seeking modification of a consent decree may meet its initial burden of establishing significant change in circumstances by showing either significant change in factual conditions or in law. Remand was required to determine whether changed circumstances warranted modification of the decree. (Suffolk County Jail, Massachusetts)

U.S. Appeals Court
CONSENT DECREE
CROWDING

Stone v. City and County of San Francisco, 968 F.2d 850 (9th Cir. 1992), cert. denied, 113 S.Ct. 1050. In connection with a consent decree governing city jail population levels, the United States District Court entered a contempt order, and appeal was taken. The appeals court, affirming in part and vacating in part, found that the entry of the contempt order was appropriate. However, the sheriff should not have been allowed to override applicable state laws by conducting early release as state law override provisions were not the least intrusive option on state government operation. The district court should have waited to see whether the threat of sanctions would induce compliance or at least have made a finding that other alternatives were inadequate. (San Francisco Jail, Hall of Justice, California)

U.S. Appeals Court
CAPACITY
COURT ORDER
CROWDING

Williams v. McKeithen, 963 F.2d 70 (5th Cir. 1992). A parish sheriff moved to vacate a district court order directing the inspection of parish jails by a court-appointed expert. The United States District Court denied the motion, and appeal was taken. The court of appeals, affirming the decision, found that the federal district court had authority, pursuant to a consent decree in which the parish had agreed to limit the jail population, to order the inspection of parish jails by its experts. This was in order to determine the number of inmates which could be housed in the jails on a permanent basis, the number of guards and support personnel required in the jails, whether any repairs or other renovations were required to meet fire, health and constitutional standards, and any other information which would aid the court in setting population limits at the jails. (Louisiana)

1993

U.S. District Court
EQUAL PROTECTION

Canell v. Bradshaw, 840 F.Supp. 1382 (D.Or. 1993). An inmate brought a Section 1983 action against county officials and the State Department of Corrections, arising from the inmate's temporary incarceration at the department's intake center which was operated by the county. The defendants moved to dismiss or for summary judgment. The district court found that the inmate failed to state a Section 1983 claim for violation of equal protection by alleging merely that inmates at the intake center were afforded different privileges than inmates at other Department institutions. The inmate did not allege that he was personally singled out for disparate treatment. (Oregon Department of Corrections Intake Center)

U.S. Appeals Court
CAPACITY
CONSENT DECREE

Collins v. Thompson, 8 F.3d 657 (9th Cir. 1993). Washington State sought to vacate a consent decree requiring the state to reduce the inmate population at a reformatory to 656, contending that the decree was consummated in 1987, even though the inmate population had increased since then. On remand after prior appeal, the U.S. District Court vacated the decree, terminating the court's jurisdiction, finding that there was no present violation of constitutional rights of the inmates and that continued supervision would result in the court's over-involvement in the management of the state prison. The inmates appealed. The appeals court, affirming the decision, found that under the clear language of the consent decree, the state was only required to reduce the inmate population at the reformatory to 656, not to maintain the population at that level. The district court properly refused to exercise continuing jurisdiction pursuant to the consent decree. (Washington State Reformatory)

U.S. Appeals Court
CONSENT DECREE
DOUBLE CELLING

Inmates of Suffolk County Jail v. Rufo, 12 F.3d 286 (1st Cir. 1993). The Commissioner of Corrections moved to vacate a consent decree between a county sheriff, the Commissioner, and inmates of the county jail after the county sheriff moved to modify the decree to allow double-bunking of pretrial detainees. The U.S. District Court denied the motion and the Commissioner appealed. The appeals court, affirming the decision, found that the Commissioner was not entitled to have the decree vacated in the absence of adequate record and in light of the prospect of further proceedings. The approach proposed by the Commissioner for vacating the consent decree gave insufficient weight to the problem of recurrence of the constitutional violations. The court could not assume that double-celling of inmates, contemplated by the county sheriff in the foreseeable future, was clearly constitutional. (Suffolk County Jail, Massachusetts)

U.S. Appeals Court
CONSENT DECREE

Johnson v. Robinson, 987 F.2d 1043 (4th Cir. 1993). Prisoners brought a class action challenging conditions of confinement at Maryland correctional facilities. Upon motion of prisoners, the United States District Court converted a timetable into a court order, and the prison officials appealed. The court of appeals, reversed and remanded with instructions. It found that the district court exceeded its authority when it adopted the order specifying a timetable in which Maryland prison officials had to make 83 improvements at prison facilities. The parties never formally agreed upon duties specified in the timetable, which added substantially to those accepted by prison officials in the original consent decree. (Maryland House of Corrections and Maryland Correctional Institution in Hagerstown)

1994

U.S. Appeals Court
CONSENT DECREE
COURT ORDER

Cooper v. Noble, 33 F.3d 540 (5th Cir. 1994), modified, 41 F.3d 212. County jail inmates brought a class action against county officials challenging jail conditions. Following the entry of a final consent judgment governing jail conditions, the officials moved for relief from the consent judgment. The inmates requested that officials be held in contempt for violations of the consent judgment. The U.S. District Court denied the motion for relief and held the officials in contempt. The officials appealed. The appeals court, affirming the decision, found that the officials failed to demonstrate that changes in factual conditions compelled the magistrate judge to grant their motion for relief from the final consent judgment governing jail conditions. Despite contentions that the new jail housed more prisoners than the old jail, and received prisoners from different governmental agencies with diverse criminal records, and was subject to inspections by governmental agencies, the officials did not adequately explain how increased inspections and changes in the number and diversity of inmates affected the workability of the final judgment, compliance with the judgment, or enforcement of the judgment. The court found that the officials failed to demonstrate that changes in the factual conditions compelled the magistrate judge to grant their motion for relief. Also, the magistrate judge's finding that county officials were in contempt for failure to comply with the final consent judgment governing jail conditions was neither clearly erroneous nor an abuse of his discretion, where the officials asserted only substantial compliance with the judgment, admitting to noncompliance in some areas. (Madison County Jail, Mississippi)

U.S. Appeals Court
CAPACITY
CROWDING

Harris v. Angelina County, Tex., 31 F.3d 331 (5th Cir. 1994). In a prisoner class action under Section 1983 challenging conditions at a county jail, the U.S. District Court found conditions to be unconstitutional and granted injunctive relief in the form of a population cap. Appeal was taken. The appeals court, affirming the decision, found that evidence supported the finding that population exceeding 111 led to denial of basic human needs of both convicted felons and pretrial detainees. In addition, evidence supported a finding that the county was aware of the overcrowding and the resulting conditions. Evidence showed that the county could and had in the past taken some steps to relieve overcrowding, and, even if a cost defense was cognizable, it was inapplicable in the absence of any evidence that additional funding was unavailable from taxpayers to address overcrowding. (Angelina County Jail, Texas)

U.S. District Court
COURT ORDER

Inmates of the Allegheny County Jail v. Wecht, 848 F.Supp. 52 (W.D.Pa. 1994). In a civil rights litigation pertaining to conditions at a county detention facility, the district court found that upon the county's compliance with court orders concerning jail conditions, the court would relieve the county of the obligation to pay further fines. In addition, fines already paid would be returned for the exclusive purpose of contribution to jail construction or drug rehabilitation programs. (Allegheny County Jail, Pennsylvania)

U.S. District Court
CAPACITY
CONSENT DECREE

Inmates of Suffolk County Jail v. Rufo, 844 F.Supp. 31 (D. Mass. 1994). A county sheriff moved to modify a consent decree requiring construction of a new jail. The U.S. District Court denied the motion and the sheriff appealed. The court of appeals affirmed and certiorari was granted. The Supreme Court vacated and remanded the case for reconsideration. On remand, the district court found that the matter would not be reassigned to another judge and that the sheriff was not entitled to modification of the

decree to permit double-bunking. The Commissioner of Corrections appealed. The court of appeals affirmed. The sheriff subsequently revised the motion to modify the consent decree to permit double-bunking. The district court found that the proposed modification to the consent decree, proposing an increase in capacity by double-bunking in 161 cells, was not tailored to fit the changed circumstance of an increased number of pretrial detainees. The court found that the consent decree would be modified to allow alteration of up to 100 cells to permit double occupancy, even though this would impair some inmate's access to common areas. In addition, the final order closing the case was not immediately entered. The court provisionally found that it was appropriate to allow a five year period before closing the case, to allow parties to seek relief from the order. (Suffolk County Jail, Massachusetts)

U.S. Appeals Court
SAFETY

McNeil v. Lane, 16 F.3d 123 (7th Cir. 1994). A state prisoner filed a Section 1983 suit, alleging prison officials violated his right under the Eighth Amendment to be free from cruel and unusual punishment by placing him in a cell within close proximity to asbestos-covered pipes. The U.S. District Court dismissed the complaint for failure to state a claim, and the inmate appealed. The appeals court, affirming the decision, found that the allegations that the defendants allowed asbestos-covered pipes to exist directly outside of the inmate's cell, and that the defendants told the inmate that they could not transfer him to another cell, did not establish that the defendants acted with minimum level of culpability sufficient to trigger Eighth Amendment protection. In addition, the complaint did not allege facts sufficient to establish that conditions were serious enough to be considered cruel and unusual, in the absence of an allegation that the inmate was exposed to unreasonably high levels of asbestos. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
CELLS
HYGIENE
PLUMBING
SANITATION

Sanford v. Brookshire, 879 F.Supp. 691 (W.D. Tex. 1994). An inmate filed a Section 1983 action asserting cruel and unusual punishment resulting from confinement to a filthy cell in a county jail for six days without functional plumbing or hygienic supplies. The district court found that the county jailer and her supervisor violated the inmate's Eighth Amendment rights, for purposes of the inmate's Section 1983 claim, by acting with deliberate indifference to complaints about filth in the cell and a nonfunctioning toilet and sink, lack of toilet paper, and a shower head which produced only a thin stream of cold water. The jailer left the inmate in the cell for six days while a written maintenance request was processed, and the jailer's supervisor told the inmate he could not receive cleaning supplies until cleaning day. However, the inmate failed to present any evidence of actual damages from violation of his civil rights and, thus, was only entitled to recover nominal damages of one dollar from the county jailer and her supervisor who were deliberately indifferent to the inmate's complaints. (Ector County Jail, Texas)

U.S. District Court
LIGHTS

Taifa v. Bayh, 846 F.Supp. 723 (N.D.Ind. 1994). Prisoners brought a class action suit challenging conditions of confinement at a prison operated by the Indiana Department of Corrections. The district court approved a settlement agreement involving assignment and transfer of prisoners, along with improvement of various prison conditions at the Maximum Control Complex (MCC). The state agreed only to assign prisoners to MCC under specified conditions and to transfer prisoners out of MCC after a specified period of time, subject to certain conditions, and agreed to alter MCC conditions in many areas. The agreement also provided for a decrease in the intensity of the 24-hour lights in the cells. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

U.S. District Court
ADA - Amer. with
Disab. Act
HANDICAPPED

Torcasio v. Murray, 862 F.Supp. 1482 (E.D. Va. 1994). An inmate brought a suit against state officials, alleging that his civil rights were violated by prison officials' failure to provide for his morbidly obese condition. The district court found that the inmate failed to state an Eighth Amendment violation, except as to the size of the toilet in his cell. The prisoner, who was five feet seven inches tall and weighed in excess of 460 pounds and had a girth of 78 inches, alleged that the handrails for the toilet facilities were inadequate to accommodate him. In addition, the commode was so small that the defendant's groin and genitals were often submerged in the toilet bowl. The court found that the inmate did state a cause of action under the Rehabilitation Act (ADA) in connection with claims that the shower, toilet, pod tables, cell doors, outdoor recreation activities, indoor recreation activities, location of the housing unit and his cell, and conditions of his confinement in the infirmary were unreasonable. (Virginia State Prison)

1995

U.S. Appeals Court
CAPACITY
CONSENT DECREE
COURT ORDER
CROWDING

Alberti v. Klevenhagen, 46 F.3d 1347 (5th Cir. 1995). Appeal was taken from remedial orders in an action challenging conditions in a county jail system. The appeals court found that the state could be held liable for conditions in the county's jail if deliberately indifferent, and remanded. On remand, the U.S. District Court found the state and county liable. The county and state appealed and the appeals court affirmed. Subsequently, the district court denied the state's motion to modify a final order or stay the imposition of fines and modified conditions imposed in the consent decree. The state appealed and the

plaintiff-prisoners cross-appealed. The appeals court found that the court order mandating a maximum inmate population and imposing a fine if that order were violated, based on the extent of the violation, was not improper. In addition, the district court did not abuse its discretion by concluding that it could ensure compliance with the population cap order by fining the state for overcrowding, even though it did not identically fine the county to ensure its compliance with the court order. The court found the majority of problems at the county jail resulted from the large number of transfer-ready felons which the state would not receive, and found that the primary responsibility for the overcrowding crises at the jail lay with the state defendants. The district court did not abuse its discretion by holding the state responsible for 90% of the costs of the monitors for the time period after the state entered the litigation. The state's actions in failing to accept transfer-ready felons were the primary cause of overcrowding in the county's jails and it was that overcrowding that predominately necessitated the presence of the monitors under the consent decree. The district court had authority to modify the jail conditions consent decree. (Harris County Jails, Texas)

U.S. Appeals Court
SPECIAL CELL

Anderson v. County of Kern, 45 F.3d 1310 (9th Cir. 1995). Pretrial detainees and convicted prisoners brought an action against prison officials under Section 1983. The U.S. District Court refused to enjoin prison officials from placing mentally disturbed or suicidal prisoners in safety cells. The detainees and prisoners appealed. The appeals court found that the district court did not err in refusing to enjoin the county from ever making use of safety cells for mentally disturbed or suicidal prisoners. There was ample testimony that some prisoners became so violent and such a danger to themselves that temporary placement in a safety cell was needed to deprive the prisoners of all means of harming themselves. The fact that some prisoners who were violent might be mentally disturbed or suicidal did not detract from the need. The deprivation of sinks, stand up toilets, and beds for short periods of time during violent episodes was constitutionally justifiable because the inmates were confined to the safety cells only for short periods of time. (Kern County Jail, California)

U.S. District Court
ADA-AMERICANS WITH
DISABILITIES ACT
HANDICAPPED

Clarkson v. Coughlin, 898 F.Supp. 1019 (S.D.N.Y. 1995). Male and female deaf and hearing-impaired inmates sued correctional officials alleging failure to accommodate their hearing impairments in violation of the Rehabilitation Act, the Americans with Disabilities Act (ADA), due process, and the Eighth Amendment. The inmates also alleged violation of equal protection because male inmates were granted access to a sensorially disabled unit, but not females. The district court found that the defendants violated all statutes and constitutional provisions under which the inmates had sought relief, warranting declaratory and injunctive relief. The court found violation of the requirements of the ADA with regard to protection against discrimination and the location of accessible services, activities and facilities. The court found violation of ADA's self-evaluation obligations, noting that while the department did complete the physical plant and personnel portions of the self-evaluation, those did not include an evaluation of inmate housing. The court found that the defendants violated the Rehabilitation Act and ADA by failing to provide them with timely access to telephone communication devices, close caption decoders for televisions, and special alarms to alert them in the event of a fire. The court held that even if all of the needs of deaf and hearing-impaired inmates were met at a sensorially disabled unit at one prison, the defendants violated their rights under the Rehabilitation Act and ADA by transferring them to other facilities for disciplinary, safety and/or medical reasons. Also, the court found that the fact that there were more male deaf and hearing-impaired inmates requiring services than female did not justify the fact that many male inmates-but no female inmates-had access to a prison's sensorially disabled unit. (New York Department of Correctional Services)

U.S. District Court
CELLS

Demaio v. Mann, 877 F.Supp. 89 (N.D.N.Y. 1995). An inmate brought a Section 1983 action against officials at a New York correctional facility. On cross-motions for summary judgment, the district court found that the inmate had no protected liberty interest in confinement in an unshielded cell. The addition of a plexiglass shield to the cell did not inflict cruel and unusual punishment on the inmate where the shield did not interfere with the air circulation and the cell was, in all other respects, identical to the standard cell in which the inmate had been previously housed. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
CONSENT DECREE
CROWDING

Harris v. City of Philadelphia, 47 F.3d 1311 and 1333 (3rd Cir. 1995). In a jail conditions case, appeals were taken from orders of the United States District Court assessing stipulated penalties against a city, directing production of a facilities audit required under a consent decree, declaring the city in contempt and dismissing a motion to modify the decree. The appeals court found that the imposition of penalties stipulated in the decree to be imposed for a delay in submitting planning documents "without any further direction from the Court," did not require notice and a hearing that would be required for a civil contempt sanction. In addition, the court was not required to find that there was no good cause for the city's delays for imposition of the penalties. Any additional cost if a facilities audit was submitted before the physical standards were approved did not make submission of the audit "impossible." The court also found that changes in administrative policy resulting from the election of a new mayor did not permit the city to unilaterally default on its obligations to the court and other litigants under the consent decree and did not preclude an imposition of a contempt sanction. In the jail conditions litigation, the dismissal of the city's motion to modify the consent decree was an

inappropriate sanction for civil contempt based on a delay in submitting plans, as the sanction was not compensatory nor was it denied to have a coercive effect because it had no provision explicitly permitting the city to refile a motion once the documents were submitted. The U.S. District Court held the city in contempt for failing to comply with an order requiring the city to maintain a 90% occupancy rate in a residential drug treatment facility. The appeals court found that the city was provided notice and a hearing sufficient to satisfy its due process rights before the district court imposed a contempt sanction of \$125,000. (Philadelphia Prison System, Pennsylvania)

U.S. District Court
CELL SIZE

Karacsonyi v. Radloff, 885 F.Supp. 368 (N.D.N.Y. 1995). A federal inmate sued a prison official alleging violation of his constitutional rights by the official's decision to penalize him for not participating in the Inmate Financial Responsibility Program (IFRP). The district court granted summary judgment for the official on issues relating to the IFRP decision, but found that the inmate's placement in a four-person cell which measured approximately 115 square feet (roughly 29 square feet of living space per man) may have amounted to cruel and unusual punishment depending upon the duration of this living situation and whether it lead to deprivations of essential needs, such as sanitation. (Ray Brook Federal Correctional Institution, New York)

U.S. District Court
DOUBLE-CELLING

Madrid v. Gomez, 889 F.Supp. 1146 (N.D.Cal. 1995). Inmates brought a class action suit challenging conditions of confinement at a new high-security prison complex in California. The district court found for the plaintiffs in the majority of issues presented, ordered injunctive relief and appointed a special master to direct a remedial plan tailored to correct specific constitutional violations. In the beginning of its lengthy opinion, the court noted that this "...is not a case about inadequate or deteriorating physical conditions...rather, plaintiffs contend that behind the newly-minted walls and shiny equipment lies a prison that is coldly indifferent to the limited, but basic and elemental, rights that incarcerated persons--including the 'worst of the worst'--retain under...our Constitution." The court held that the fact that a prison may be new does not excuse its obligation to operate it in a constitutionally acceptable manner. The court held that prison inmates established prison officials' deliberate indifference to the use of excessive force by showing that they knew that unnecessary and grossly excessive force was being employed against inmates on a frequent basis and that these practices posed a substantial risk of harm to inmates. According to the court, officials consciously disregarded the risk of harm, choosing instead to tolerate and even encourage abuses of force by deliberately ignoring them when they occurred, tacitly accepting a code of silence, and failing to implement adequate systems to control and regulate the use of force. The court found that officials had an affirmative management strategy to permit the use of excessive force for the purpose of punishment and deterrence. The court found that double-celling and inmate assaults did not rise to the level of an Eighth Amendment violation in the absence of evidence that the overall total number of cell fights over a three-year period was significantly more than would be expected for a facility of the prison's size and security designation. (Pelican Bay State Prison, California)

U.S. District Court
FIRE SAFETY
HYGIENE
PLUMBING
SANITATION

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court found that the use of chemical toilets violated the Eighth Amendment rights of the inmates where the use and emptying of the toilets resulted in extremely unsanitary conditions, the toilets caused an unbearable stench, and prison inmates suffered numerous health problems caused by the use of toilets including nausea, burns, and rashes. The court also found that there were genuine issues of material fact as to whether prison officials acted with deliberate indifference regarding chemical toilets, precluding summary judgment. The court denied summary judgment for the prison officials with regard to fire safety issues raised by the inmates. Inmates alleged fire hazards caused by the lack of a functioning sprinkler system and the lack of automatic locks on cell doors, which are required by a state building code. Prison officials responded that the facility had implemented a rigorous fire safety program which mitigated any dangers imposed by these deficiencies. The court noted that while it may look to state codes in its effort to determine society's standard of decency, such standards do not necessarily reflect constitutional minima. The court found that the inmates' assertion that their exposure to asbestos fibers causes cancer stated a cognizable Eighth Amendment claim, precluding summary judgment. (Southeast Correctional Center, Massachusetts)

1996

U.S. Appeals Court
NOISE
LIGHTS

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The inmate alleged that he was restricted to his cell or unit for extended periods of time and had insufficient space to exercise in his unit. His claims that his pleas for psychological treatment were ignored and that he was deprived of necessary medication were also sufficient to overcome a motion to

dismiss. The court found that although the inmate had no right to leave his cell to go to a general reading library, his allegation of denial of access to reading materials and inadequate lighting for reading in the jail stated a § 1983 claim. The inmate's claim of excessive noise in the jail also stated a § 1983 claim. He alleged that noise occurred every night--often all night--and interrupted or prevented his sleep. He also stated a claim by alleging that he was denied protection from cold temperatures in the jail by the jail staff's failure to provide him with blankets. (Cook County Jail, Illinois)

U.S. Appeals Court
ADA-AMERICANS WITH
DISABILITIES ACT

Bryant v. Madigan, 84 F.3d 246 (7th Cir. 1996). A paraplegic inmate sued prison employees under the Eighth Amendment and the Americans with Disabilities Act (ADA) for allegedly refusing his request for guardrails for his bed, and for denying him pain medication. The district court dismissed the case and the appeals court affirmed in part and reversed in part, finding that the inmate failed to state a claim under ADA. The appeals court discussed the question of whether the ADA is applicable to correctional facilities, noting that the question has divided the circuit courts. The court stated that it was very far from clear that prisoners should be considered "qualified individual[s]" within the meaning of the Act. According to the court, incarceration, which requires the provision of a place to sleep, is not a "program" or "activity" of a public entity within the meaning of the Act, nor is sleeping in one's cell. Even if there were some applicability of the Act to inmates, the court found that ADA would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners, or by medical malpractice. The court found that the inmate did not allege discrimination based on his disability, but rather incompetence in the treatment of his condition. (Ill. Dept. of Corrections)

U.S. District Court
EQUIPMENT
FURNISHINGS

Davidson v. Scully, 914 F.Supp. 1011 (S.D.N.Y. 1996). A prisoner moved for a preliminary injunction in his suit against prison officials. The district court refused to grant an injunction regarding the prisoner's claim that furnishings and supplies were inadequate to allow him to prepare his case. The court noted that although having to sit on a bed and write on a shelf attached to the wall, with an undersized pen, using only an overhead light fixture as lighting, might cause strain and make writing less comfortable, these complaints did not amount to an unconstitutional denial of reasonable access. The court found that the state's decisions regarding furnishings and supplies available to inmates in the special housing unit were reasonably related to legitimate penological interests, supporting the need to limit furniture and light fixtures to items that are immobile. (Auburn Correctional Facility, New York)

U.S. Appeals Court
CELL SIZE

Ferguson v. Cape Girardeau County, 88 F.3d 647 (8th Cir. 1996). A prison inmate filed civil rights claims and state law claims against county officials alleging violation of his constitutional rights when he was a pretrial detainee. The district court granted summary judgment for some defendants, and the appeals court affirmed in part and remanded in part. The court found that confinement of the pretrial detainee in a space of just over 30 square feet and the use of a floor mattress for 13 nights did not constitute "punishment" in violation of the detainee's due process rights. The court noted that the totality of circumstances supported the existence of a legitimate governmental interest, based on the short duration of confinement, the necessity to keep the detainee under observation for both his medical condition and safety concerns, and the amount of time he spent out of his cell. (Cape Girardeau County Jail, Missouri)

U.S. Appeals Court
LIGHTS
VENTILATION
CELL SIZE

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The appeals court found that a disputed issue of material fact as to noise in the prison--whether there was constant yelling, screaming and banging--precluded summary judgment. The court also found that allegations that the prison had inadequate ventilation and air flow might state a claim for cruel and unusual punishment if the conditions undermine the health of inmates and the sanitation of the prison. Confinement in a 54 square foot cell did not violate the inmate's right to be free from cruel and unusual punishment. Although the average temperature of the inmate's cell tended to be either well above or well below room temperature, the inmate's constitutional rights were not violated. The court ruled that the practice of requiring inmates to live in constant illumination results in unconstitutional physical and psychological harm. (Oregon State Prison)

U.S. Appeals Court
CROWDING
CONSENT DECREE
COURT ORDER

McClendon v. City of Albuquerque, 79 F.3d 1014 (10th Cir. 1996). After a class action suit was filed against a detention facility, the district court granted a preliminary injunction to reduce the population. The district court judge had made an unannounced visit to the facility, which was followed by a one-day evidentiary hearing. The preliminary injunction was converted into a permanent injunction based on a partial settlement agreement between the parties. The district court ordered the facility to reduce its inmate population according to a schedule of progressively decreasing population caps, and imposed detailed conditions concerning the day-to-day operation of the facility. To comply with the population caps, the order required the defendants to implement a "Matrix Release System" (MRS) which assigned a numerical score to each inmate, providing the basis for the release of selected prisoners when the population cap was exceeded. After using the MRS twice, the defendants decided to avoid exceeding the population caps by housing inmates in other facilities. The plaintiffs objected to the arrangements that were proposed (which included using tents, the basement of the courthouse, and re-opening a facility which had been closed) and

filed suit. The judge imposed a condition which required the defendants to make any proposed site available to plaintiffs' counsel for inspection; in the event of a dispute between the parties, the judge noted that he would be "happy to tour any other facilities that may be used as an interim measure." Local government officials and employees filed an application for an emergency stay of the order and a writ of prohibition seeking relief from the injunction. The district court had required prior court approval and inspection by inmates' counsel of any confinement facilities that were to be used other than the local detention center. The appeals court assigned the petition for writ to a panel for review, and granted a stay of the district court order, finding that the local officials had demonstrated the likelihood of success on appeal. The officials secured a stay of the order and eventually the court vacated some elements of the decision when the City opened a new facility (100 F.3d 869) (Bernalillo Co. Det. Center, N. M.)

U.S. District Court
ADA-AMERICANS WITH
DISABILITIES ACT
CELLS

Roe v. County Com'n of Monongalia County, 926 F.Supp. 74 (N.D.W.Va. 1996). A mental health patient brought an action under the Americans with Disabilities Act (ADA) against a county and county officials for alleged statutory and constitutional violations which occurred when the patient was picked up on a mental health warrant. The district court denied the defendants' motions to dismiss, finding that the action was timely and that the patient stated a claim under ADA. The patient claimed he was held for a time in a padded cell, was handcuffed and shackled, was not given proper treatment or a hearing, and was not allowed to use a bathroom, change clothes or eat without handcuffs. The court found that the inmate was unable to communicate with his family, was unable to attend to his personal hygiene, and was isolated and segregated in a manner that the ADA was designed to prevent. (Monongalia County Sheriff's Department)

1997

U.S. Appeals Court
CONSENT DECREE

Benjamin v. Jacobson, 124 F.3d 162 (2nd Cir. 1997). Prison officials who had entered into a consent decree governing conditions at New York City jails moved for the immediate termination of those decrees under the Prison Litigation Reform Act (PLRA). Pretrial detainees opposed the motion. The district court vacated the decrees and the detainees appealed. The appeals court affirmed in part and reversed in part, finding that the PLRA's consent decree termination provision did not violate the separation of powers principle, equal protection or due process. The court found, however, that the provision refers to constitutional termination of federal remedies arising out of consent decrees, but does not mandate the termination of the decrees themselves. The court also found that the PLRA provision made only the nonfederal aspects of a consent decree unenforceable by federal courts; nonfederal provisions remained binding but could only be enforced by state courts. (New York City Department of Correction)

U.S. Appeals Court
ADA-Americans with
Disabilities Act

Crawford v. Indiana Dept. of Corrections, 115 F.3d 481 (7th Cir. 1997). A former state prisoner sued the Indiana Department of Corrections alleging violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit on the ground that the Act is inapplicable to prison inmates and the prisoner appealed. The appeals court reversed and remanded, finding that the Americans with Disabilities Act applies to state prisoners. The court stated that although incarceration itself is hardly a "program" or "activity" to which a disabled person might wish access, there is no doubt that an educational program is a program and when it is provided by and in a state prison it is a "program" within the meaning of the ADA. The court also held that the use of a state prison library and dining hall are "activities" under ADA, conferring rights on qualified disabled individuals. The State had conceded that ADA applied to a prison's relations with its employees and visitors, as well as to public schools. According to the court, ADA was cast in terms of eliminating a form of discrimination that Congress considered unfair, not in terms of subsidizing an interest group. The court decision did not discuss the Rehabilitation Act separately because it found it to be "materially identical to and the model for the ADA." (Indiana Department of Corrections)

U.S. Appeals Court
VENTILATION

Dixon v. Godinez, 114 F.3d 640 (7th Cir. 1997). A state prisoner brought a § 1983 action against prison officials alleging that conditions of his confinement in protective custody violated the Eighth Amendment. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that poor ventilation in the inmate's cell during the summer did not violate the Eighth Amendment, as the cell had a window which opened and a small electric fan, and a small "chuckhole" in the door which provided some cross-ventilation. The prisoner's claims that the rank air in the cell exposed him to diseases and caused respiratory problems was not backed by medical or scientific sources. The appeals court found that summary judgment was precluded by issues of fact as to whether clothes and bedding provided to the prisoner adequately protected him from cold temperatures in his cell in the winter. The court noted that to determine whether low temperatures in the cell violated the prisoner's Eighth Amendment rights, the court should examine such factors as the severity of the cold, its duration, whether the prisoner has an alternative means to protect himself from cold, the adequacy of such alternatives, and whether the prisoner must endure other uncomfortable conditions as well as cold. (Stateville Correctional Center, Illinois)

U.S. District Court
FIRE SAFETY
HYGIENE
LIGHTS
NOISE
PLUMBING
SAFETY
SANITATION
EARTHQUAKES
CELL SIZE
CROWDING
STAFFING
DOUBLE CELLING

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting. The court held that the plaintiffs failed to show deliberate indifference or another basis for liability on the claims of current overcrowding, inadequate food preparation and storage, provision of medical services, personal visitation, hours and accessibility of legal visitation, legal materials and assistance, and outdoor recreation. The court noted that pretrial detainees enjoy the greater protections afforded by the Fourteenth Amendment's due process clause, rather than the Eighth Amendment's protection against cruel and unusual punishment.

The court found that some conditions of pretrial confinement may violate the Constitution in combination when they would not do so alone, but only when they have a mutually enforcing effect that produces deprivation of a single, identifiable human need such as food, warmth, or exercise.

Conditions violated the pretrial detainees' due process rights where the jail operated at about 124% of its capacity on average during a nine-month period, resulting in double-celling of inmates in 41-square-foot cells designed for single occupancy, and causing excessive time in cells and insufficient day room space when inmates were allowed to leave their cells.

The court found that officials were entitled to summary judgment precluding any finding of deliberate indifference on crowding and space allocation claims because of their efforts to move inmates from the jail to relieve overcrowding.

The court found that the detainees were not provided with reasonable safety from fire because the defendants failed to install door assemblies or additional sprinklers and had not responded reasonably to fire safety risks at the jail.

The detainees were exposed to excessive risks of harm from earthquakes in violation of their due process rights, where the jail lay a quarter mile from the San Andreas fault and faced a 50% chance of experiencing a high magnitude earthquake over the next 50 years. The jail appeared structurally unable to withstand substantial seismic activity and had a malfunctioning bar locking system and inadequate staffing that further augmented risk by potentially leaving inmates trapped in their cells during and after an earthquake. The court rejected the government's contention that more than 30 public buildings in the area had the same seismic rating as the jail. The court noted that the public's alleged tolerance of risk associated with entering a poorly-constructed library or museum for an hour did not equate to tolerance for spending 100 days continuously trapped in such a facility.

The court found deliberate indifference to the risk of earthquakes despite the defendants' contention that it would cost more than \$33 million to upgrade the jail and efforts to gain voter approval for funding for a new facility had failed. The court noted that the city could have attempted other funding methods and did have some funds allocated for seismic repairs but diverted that money to other projects.

The court found due process violations resulting from physical defects in the jail's water, plumbing and sewage system which created safety hazards. The jail's antiquated water supply system violated public health requirements and safe drinking water codes. Deteriorated sanitary fixtures such as unsealed floors, hot water pipes with deteriorated asbestos insulation, violated the detainees' rights as did sewage leaks from plumbing equipment. These conditions violated detainees' rights even though there was no evidence of any disease resulting from the deficiencies.

Despite some efforts to reduce noise in the jail, the detainees established a constitutional violation in noise levels which ranged between 73 and 96 decibels, exceeding acceptable levels, and caused increased risk of psychological harm and safety concerns due to officers' inability to hear calls for help. The extent to which noise continued to exceed maximum standards suggested that previous noise reduction efforts were merely cosmetic and that far more could be done.

The court found due process violations from poor lighting where correctional standards mandated lighting of at least 20 foot-candles in living areas, and some health standards required 30 foot-candles, but readings in the jail ranged from 0.28 to 5 foot-candles.

The court concluded that development and implementation of a narrowly tailored remedial plan was an appropriate remedy, and that the plan was to address each condition that was found unconstitutional including fire safety, seismic safety, water, plumbing, sewage, noise, lighting and overcrowding. (San Francisco Jail No. 3, California)

U.S. District Court
VENTILATION

Thomas v. Irvin, 981 F.Supp. 794 (W.D.N.Y. 1997). A prisoner brought a § 1983 action against prison officials alleging that their placement of him in drug watch isolation status for seven days violated the Eighth Amendment and his due process rights. The district court found that the state did not violate the inmate's due process rights, noting that the room in which he was confined was larger than an average cell at the prison and was equipped with all of the essential items necessary for proper rest and hygiene. The inmate

was allowed to exercise and smoke cigarettes, and he received regular meals and daily medical attention. The officials had obtained credible information from a confidential informant that the inmate was in possession of narcotics after a visit. The prisoner had alleged that the isolation room had inadequate ventilation because two air vents in the room were covered as a security measure to prevent inmates from concealing contraband in the vents. (Wende Correctional Facility, New York)

1998

U.S. District Court
VENTILATION
DOUBLE CELLING
CELL SIZE

Bolton v. Goord, 992 F.Supp. 604 (S.D.N.Y. 1998). Inmates brought a § 1983 suit claiming that New York's practice of housing two inmates in a prison cell previously used to house one inmate violated the Eighth and Fourteenth Amendments. The district court held that double celling under the conditions set forth at trial did not constitute cruel and unusual punishment and that New York had not conferred on inmates a protected liberty interest in single-cell housing. The court held that the application of the Eighth Amendment is guided by contemporary standards of decency, but while the opinions of experts and the standards established by concerned organizations may be helpful on some questions, they do not establish constitutional minima. According to the court, public attitudes toward certain punishment, or what society is willing to tolerate in its prisons, is the more appropriate gauge of contemporary standards. The court noted that when double-celling was researched prior to its implementation, officials considered whether an inmate was violent or victim-prone before placing him in a double cell, evidence did not establish a cause and effect relationship between double-celling and an increase in violence, and guidelines for double-celling took into account medical conditions. According to the court, double-celling was in effect in most other state prison systems and in the federal system at the time it was implemented in New York. Inmates had the same access to extensive programs and services after double-celling was implemented, and there was no evidence of "overcrowding" in the sense that the facility had to compromise its services in order to handle the additional number of inmates. The court also noted that disputes between cellmates were handled quickly and never rose to more than minor incidents of physical violence, the small cell size was not shown to have resulted in the deprivation of any basic human need, and there was no indication that natural ventilation was so inadequate as to cause injury. According to the court, the Eighth Amendment does not guarantee inmates a certain type of ventilation or a certain rate of air exchange. (Woodburne Correctional Facility, New York)

U.S. Appeals Court
CELL CAPACITY
PLUMBING

Craig v. Eberly, 164 F.3d 490 (10th Cir. 1998). A pretrial detainee brought a § 1983 action against a sheriff in his individual capacity, and a county, alleging he was subjected to unconstitutional conditions of confinement while he was confined in the jail. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that summary judgment for the sheriff was precluded by the nature, seriousness and duration of the alleged deprivations. The detainee alleged that he was placed in a cell that measured eleven by fifteen feet with five or six other men for 24-hours a day, that his bed linens were never cleaned nor exchanged, that he was permitted only two showers a week in an unsanitary shower stall, that the sink in his cell frequently clogged and prevented his basic hygiene, that his cell had poor ventilation, and that he was allowed out of his cell for recreation only two times during his confinement. The parties disagreed on the length of the detainee's confinement, which the court found to be between two-and-one-half months and six months. (Otero County Jail, Colorado)

U.S. District Court
CONSENT DECREE

Essex County Jail Annex Inmates v. Treffinger, 18 F.Supp.2d 445 (D.N.J. 1998). Inmates filed a motion to hold county corrections defendants in civil contempt for noncompliance with a consent decree addressing unconstitutional conditions of confinement. The district court held that monetary sanctions for civil contempt were not appropriate in light of the county's efforts to attain full compliance by investing over \$200 million in new facilities and improving existing ones. The court concluded that contempt sanctions would be counterproductive and would impede the county's efforts to build a new jail. The court held that it could not consider whether a classification plan satisfied the consent decree until an independent analysis was conducted. The court noted that the Special Master reported that staffing was inadequate, and as a result inmates and staff are exposed to danger and other problems. The court adopted the Master's recommendation that an independent, professional staffing analysis be conducted to address staff training, coverage and operations. The Master also reported that there was an insufficient supply of personal hygiene items, and the court ordered the defendants to comply with the consent order's terms by issuing adequate amounts of personal hygiene items, including toilet paper, soap, shampoo, toothpaste, toothbrush, comb, mirror, individual razors and shaving cream or powder. (Essex County Jail and Essex County Jail Annex, New Jersey)

U.S. District Court
FACILITY DESIGN

Giron v. Corrections Corp. of America, 14 F.Supp.2d 1252 (D.N.M. 1998). A female inmate who had been raped by a prison guard brought a § 1983 action alleging that officials deliberately disregarded a substantial risk of harm to her and denied her necessary psychological care. The district court granted summary judgment in favor of the officials.

The court held that the officials' awareness of two prior incidents of sexual misconduct by other security and correctional officers was not sufficient to establish that the officials must have drawn the inference that a substantial risk of harm existed. The court found that the alleged "voyeuristic" location and viewability of shower areas, the absence of food tray slots in a segregation unit, and the staffing and monitoring of guards in the segregation unit, did not create a substantial risk of harm. The court held that the inmate was not deprived of necessary medical care following the incident. She received psychiatric care after she was sexually assaulted, her care was assessed by an independent psychiatric medical evaluator who concluded that her treatment had been "reasonable and appropriate," and she saw a psychiatrist 18 times and a psychologist at least 100 times during a six month period. (New Mexico Women's Correctional Facility, operated by the Corrections Corporation of America)

U.S. District Court
MEDICAL AREAS

Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court found many violations of inmates' constitutional rights. The court noted that budgetary limitations or inadequate resources can never be a valid justification for constitutional violations. The court concluded that the system had failed to provide adequate facilities and equipment necessary for the provision of adequate health care of inmates pursuant to acceptable professional standards. But the court noted that despite the findings of the expert, the National Commission on Correctional Health Care had accredited the medical care programs in four prisons and awarded provisional accreditation to four more in 1992. But an expert found noncompliance with at least one essential standard at every accredited facility, and the Department of Health provided the court monitor's staff with credible evidence that employees had falsified documents in support of accreditation. (Administration of Correction, Puerto Rico)

U.S. Appeals Court
HANDICAPPED

Simmons v. Cook, 154 F.3d 805 (8th Cir. 1998). Paraplegic inmates brought a § 1983 suit challenging their placement in solitary confinement. The district court ruled in favor of the inmates and the appeals court affirmed. The appeals court held that the inmates' Eighth Amendment rights were violated and that damage awards of \$2,000 for each inmate for their 32-hour period of solitary confinement were not excessive. The court found that corrections officials violated the inmates' rights because the inmates did not receive adequate food or medical care while in solitary confinement. The inmates' wheelchairs did not fit through the solitary confinement cell doors, so they were lifted onto their beds and their wheelchairs were folded and then reopened inside their cells. Because their wheelchairs could not pass their cell bunks to reach the barred door where food trays were set, the inmates missed four consecutive meals. The inmates were unable to use a toilet during their 32-hours in solitary confinement because the facilities were not accessible and no assistance was provided. (Arkansas Department of Corrections, Diagnostic Unit)

U.S. District Court
ASBESTOS

Smith v. Montefiore Med. Center-Health Services, 22 F.Supp.2d 275 (S.D.N.Y. 1998). A pretrial detainee sued a city and city corrections officials to recover from alleged injuries he suffered as the result of his alleged exposure to asbestos. The district court held that a three-day delay in treating the detainee after his alleged exposure did not amount to deliberate indifference to his serious medical needs, noting that a mere delay in rendering medical treatment does not rise to the level of a constitutional violation. The court also found that prison officials' failure to warn the detainee of the dangers of exposure to asbestos in connection with asbestos abatement work in the prison did not support a claim of deliberate indifference. Warning signs were reportedly posted three days after the alleged incident, which the court found to be at most negligent conduct. (George Motchan Detention Center, New York)

1999

U.S. Appeals Court
CROWDING
COURT ORDER

Berwanger v. Cottey, 178 F.3d 834 (7th Cir. 1999). A county jail moved under the Prison Litigation Reform Act (PLRA) to terminate the maximum population features of a court injunction. The district court entered an order terminating all prisoner release orders but the appeals court remanded the case. The appeals court held that the district court erred by letting more than a year pass without action on the motion to terminate prospective relief, and then terminating the decree without making any findings. (Marion County Jail, Indiana)

U.S. District Court
CROWDING
HYGIENE
SANITATION
PLUMBING

Harris v. Brewington-Carr, 49 F.Supp.2d 378 (D.Del. 1999). A pretrial detainee challenged his conditions of confinement and a district court judge refused to dismiss the case, finding that the detainee had sufficiently alleged violation of his due process rights. The pretrial detainee alleged that he was required to sleep on the floor for one week while being held in a booking and receiving area, that he had to sleep on the floor for three weeks before receiving

a bed, that he was housed in a one man cell with two other men, that the open toilet in his cell was unsanitary and deprived him of his right to privacy, that there was a lack of showers and excessive noise, that he was housed with sentenced and unsentenced inmates, and that as a non-smoker he had to breathe cigarette smoke from other inmates. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
DAYROOM
RECREATION AREAS
WINDOWS

Richard v. Reed, 49 F.Supp.2d 485 (E.D.Va. 1999). A prisoner brought a § 1983 complaint alleging that county jail officials violated his Eighth Amendment rights by depriving him of direct sunlight for more than 100 days. The district court dismissed the case, finding that the prisoner failed to state an Eighth Amendment claim because deprivation of sunlight for 100 days was not a sufficiently serious deprivation of a human need. The court held that the case was frivolous. The prisoner was confined in a housing unit comprised of a dayroom which had no windows and ten cells, each of which had a window. Prisoners were not allowed in their cells between 8:30 a.m. and 5:30 p.m. and prisoners who wanted to take recreation could use an indoor recreation area. The prisoner alleged that his health was placed in danger because he was exposed to illness caused by a lack of exposure to direct sunlight. The court suggested that there might be extreme circumstances under which deprivation of sunlight or light for an extended period of time might amount to a serious deprivation, but found this was not such a case. The court cited Charles Dickens's *A Tale of Two Cities* in which a character was imprisoned in the Bastille for almost eighteen years in a small cell "where the light of day has never shone." But after reviewing nine cases that had considered a similar question with varied results, the court concluded that "the threshold for constitutional significance occurs well short of the Dickens example." The court found that the conditions cited by the prisoner did not violate contemporary notions of decency, stating that "This conclusion finds support given that people who serve on nuclear submarines or who live within the Arctic Circle or in Antarctica go without direct exposure to sunlight for similarly long periods of time." The court also noted that the window in the prisoner's cell would provide natural light in the summertime when he was allowed back into the cell at 5:30 p.m. (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
HANDICAPPED

Schmidt v. Odell, 64 F.Supp.2d 1014 (D.Kan. 1999). A former county jail inmate, a double amputee without legs from a point below his knees, brought a civil rights action against jail officials asserting claims under the Eighth Amendment. The district court denied summary judgment for the defendants, finding that it was precluded on all claims. The court held that refusal to provide the inmate with a wheelchair while confined in the county jail did not violate the Eighth Amendment since jail exits, entrances and hallways were too narrow to accommodate wheelchairs and there were legitimate safety concerns about placing a wheelchair among the jail's general population. The court also found that deficiencies such as plumbing problems, overcrowding, inadequate exercise areas, and other defects during the inmate's confinement in the county jail did not rise to the level of cruel and unusual punishment; there were opportunities to exercise in dayrooms, plumbing problems and other allegedly unsanitary conditions did not pose a serious threat to the health, safety or well-being of the inmate, and overcrowding did not result in denial of the minimal measures of life's necessities. But the court denied summary judgment for jail officials on the issue of whether they were deliberately indifferent to the basic needs of the inmate while he was confined at the jail. The court noted that the ability of the inmate to move himself about in the jail, to use the toilet, to use the shower, to obtain his meals, and to obtain suitable recreation and exercise, were a basic need that jail officials were obligated to help provide under the Eighth Amendment. The court also noted that the fact that the inmate was able to use most of the jail services did not preclude his Americans with Disabilities Act (ADA) or Rehabilitation Act claims against jail officials. (Cowley County Jail, Kansas)

U.S. District Court
FIRE SAFETY

White v. Cooper, 55 F.Supp.2d 848 (N.D.Ill. 1999). An inmate at a state prison brought an action against prison officials and a construction company to recover damages for injuries he incurred in a fire. The district court dismissed the construction company from the suit finding that the company was not a "state actor" for the purposes of § 1983. The court found that the inmate stated a claim against prison officials by alleging that they failed to assist him for an unreasonable time during a prison fire. According to the court, the allegation that state correctional officials knew the inmate faced severe and substantial risk from fire because of inoperative fire safety and prevention equipment, and failed to ensure that the system was operational, stated an Eighth Amendment claim. In addition to their disregard of non-operational fire safety and prevention systems, officials also allegedly failed to free the inmate from his burning cell. (Joliet Correctional Center, Illinois)

2000

U.S. Appeals Court
FURNISHINGS
SAFETY

Brown v. Bargery, 207 F.3d 863 (6th Cir. 2000). An inmate sought permission to proceed in forma pauperis in his § 1983 action that alleged violation of his Eighth Amendment rights because his sleeping bunk was installed upside down causing him to slide off and land on the concrete floor, and that anchor bolts that fastened the bunk to the wall improperly protruded into the sleeping area posing a potential for injury. The district court denied the inmate's motion finding the action to be frivolous, and the inmate appealed. The appeals court reversed and remanded, finding that the inmate's claims could conceivably implicate an Eighth Amendment concern. (Hardeman County Correctional Facility, Tennessee)

U.S. District Court
PROTECTIVE
CUSTODY

Graham v. Perez, 121 F.Supp.2d 317 (S.D.N.Y. 2000). Protective custody inmates at a state prison brought a § 1983 action challenging their conditions of confinement. The district court dismissed the case, finding that the inmates failed to exhaust their administrative remedies prior to filing suit. The court also found that certain complained-of conditions of confinement were insufficiently serious to constitute Eighth Amendment violations as a matter of law. The complaints included: only two and one-half hours out of cell time daily, deprivation of job opportunities and prison wages, limited location and content of meals, inadequate lighting, lack of electrical outlets in cells, limited recreational opportunities, limited access to newspapers, limited personal telephone calls, and limited personal grooming opportunities. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
SUICIDE

Jacobs v. West Feliciana Sheriff's Dept., 228 F.3d 388 (5th Cir. 2000). Survivors of an arrestee who had committed suicide brought a § 1983 action against a sheriff's department and against the sheriff and deputies. The district court denied individual defendants' motions to dismiss on the ground of qualified immunity and they appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that the sheriff and senior deputy, who knew of a prior suicide under similar circumstances, could have been found to have acted with deliberate indifference to the arrestee's known suicidal tendencies, but that a newly-hired deputy who only followed orders which were not facially outrageous, was entitled to qualified immunity. The arrestee had been placed in a cell that had a significant blind spot and tie off points, and was provided with a blanket and towel even though a prior detainee had hanged himself in the same cell under similar circumstances. The female arrestee had been brought to the local jail by state troopers who informed jail employees that she had tried to kill herself when she was apprehended. She was placed in a "detox" cell which is used to house inmates who are intoxicated, who need to be isolated for security reasons, or who are designated for placement on a suicide watch. The arrestee was placed on a suicide watch, but the cell could be completely observed only if an officer viewed it from an adjacent hallway. The following evening the arrestee was discovered hanging from a light fixture in the cell, having not been observed by jail staff for as many as 45 minutes prior to being discovered. (West Feliciana Parish Prison, Louisiana)

U.S. District Court
ADA- Americans with
Disabilities Act
HANDICAP

Kruger v. Jenne, 164 F.Supp.2d 1330 (S.D.Fla. 2000). A blind county jail inmate brought a § 1983 and Americans with Disability Act (ADA) suit against a sheriff and a private medical care company that contracted to provide medical care to inmates, alleging deprivation of necessary accommodations and failure to treat his medical needs. The district court held that the inmate stated a § 1983 Eighth Amendment claim against the company and an ADA claim against the sheriff in his official capacity, and allowed the inmate to maintain simultaneous ADA and § 1983 claims against the sheriff. The private medical company allegedly failed to accommodate the inmate's blindness with a cane or otherwise, despite advance notice of the need for one, and allegedly deliberately delayed or withheld needed treatment for injuries sustained in several falls, based on cost-savings policies, leading to unnecessary suffering. The sheriff allegedly failed to have the inmate's cell fitted with hand rails or provide him with a cane, leading directly to the inmate's injuries when he suffered several falls. The inmate alleged that the sheriff carried out a policy of denying or delaying needed medical care for cost-savings reasons. (North Broward Detention Center, Florida, and EMSA Correctional Care)

U.S. District Court
CROWDING
SANITATION

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. The court denied summary judgment for the officials on the issue of whether the jail's dormitory violated state fire and sanitation codes. The detainee alleged that the dormitory was overcrowded and had only eight sinks, commodes and showers for 72 pretrial detainees that were housed in the dormitory. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
VENTILATION
CROWDING

Oladipupo v. Austin, 104 F.Supp.2d 654 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the allegation that the detainee was deprived of a mattress and bed presented a cognizable constitutional claim. According to the court, the detainee's allegation that he was forced to sleep on a cold, wet floor for seven hours presented a due process claim. Jail officers had removed mattresses from a cell in which the detainee and others were housed after they had placed barriers in front of the ventilation system in an attempt to control the temperature in the cell. The court held that an issue of fact existed as to whether jail officials were personally involved in creating and perpetuating the conditions. (Avoyelles Parish Jail, Louisiana)

2001

U.S. Appeals Court
VISITATION AREAS

Benjamin v. Fraser, 264 F.3d 175 (2nd Cir. 2001). A city corrections department moved for immediate termination of consent decrees requiring judicial supervision over restrictive housing, inmate correspondence, and law libraries at city jails, pursuant to the Prison Litigation Reform Act (PLRA). The district court vacated the decrees and pretrial detainees appealed. The appeals

court affirmed in part, reversed in part, and remanded. On remand the district court granted the motion in part and denied it in part and the city appealed. The appeals affirmed. The appeals court held that the detainees were not required to show actual injury when they challenged regulations which allegedly adversely affected their Sixth Amendment right to counsel by impeding attorney visitation. The appeals court concluded that there was a continuing need for prospective relief with respect to the detainees' right to counsel, and the relief granted by the district court satisfied the requirements of PLRA. The court found that detainees were experiencing unjustified delays during attorney visitation. The district court required procedures to be established to ensure that attorney visits commenced within a specified time period following arrival at the jail, and the city was instructed to ensure the availability of an adequate number of visiting rooms that provide the requisite degree of privacy. (New York City Department of Correction)

U.S. District Court
TEMPERATURE

Brown v. McElroy, 160 F.Supp.2d 699 (S.D.N.Y. 2001). A prisoner brought an action against the Immigration and Naturalization Service (INS) and Public Health Service (PHS) alleging inadequate medical treatment and other complaints. The district court found that PHS officials were absolutely immune from liability on the claim of inadequate health care. The court found no constitutional violation from the alleged conditions of a cold room, no clean bed linens, toiletries, or clean clothing. (Buffalo Federal Detention Facility, Batavia, New York)

U.S. District Court
BEDS
NOISE
TEMPERATURE
FURNISHINGS
SANITATION

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded \$174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that findings that conditions were unconstitutional were supported by evidence, as were findings that officials were deliberately indifferent to the inmate's serious medical needs. The appeals court held that the prisoner sufficiently alleged a "physical injury" for the purposes of PLRA, with allegations that excessive heat in his cell made him dizzy, dehydrated, and disoriented, gave him a severe rash, and that smoke from rolled toilet paper "wicks" and frequent use of mace gave him bronchial irritation and a runny nose. The inmate also alleged that the small bunk aggravated his arthritis. According to the court, the inmate did not have to allege that excessive noise in the cell block caused him hearing loss, where his contention was that the noise levels contributed a deprivation of sleep. The appeals court held that the inmate's exposure to feces in his cell, foul water, filth, excessive heat, smoke, and mace, and the lack of outdoor exercise, resulted in a substantial risk of serious harm. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. District Court
TOILETS
BEDS

Carlyle v. Aubrey, 189 F.Supp.2d 660 (W.D.Ky. 2001). A former prisoner brought a § 1983 action against a county jail alleging Eighth Amendment violations. The district court granted summary judgment in favor of the defendants. The court held that the prisoner was not subjected to unconstitutional conditions of confinement, even though water service in his cell was broken, he was forced to sleep on the floor, and he was fed only a bologna sandwich. The prisoner had admitted that he was offered drinking water on at least two occasions and that officers brought in water to flush the toilet. The court noted that although forcing a prisoner to sleep on the floor for extended periods may amount to an Eighth Amendment violation, the temporary inconvenience of one night spent on the floor does not. (Jefferson County Jail, Kentucky)

U.S. District Court
CELL SIZE
CELL CAPACITY
CROWDING

Chilcote v. Mitchell, 166 F.Supp.2d 1313 (D.Or. 2001). A former prisoner and detainees at a federal detention center sued officials alleging they were subjected to unconstitutional conditions of confinement. The district court granted summary judgment in favor of the officials, finding no Eighth and Fourteenth Amendment violations from the size of the cell. The court noted that all three occupants of the cell could not be off of their bunks at the same time because the cell was so small, and the occupants were confined in the cell for 20 to 21 hours daily. The court found that the crowding was necessitated by the volume of incoming detainees and the lockdown was needed because of the danger posed by detainees had not yet been evaluated. The cells had been designed to house two inmates and ranged in size from 80.7 to 96 square feet. In a triple-bunk cell, 40 to 45 square feet of floor space is covered by the bunks, sink and toilet. The remaining floor space, 35 to 40 square feet "effectively does not permit all three occupants to be off their bunks at the same time." There are no lockers, chairs or tables in the cells. (Fed'l Detention Ctr., Sheridan, Oregon)

U.S. District Court
NEPA- National Environmental Protection Act
ENVIRONMENTAL IMPACT

Citizens Advy. Comm. on Priv. Pris. v. U.S. D.O.J., 197 F.Supp.2d 226 (W.D.Pa. 2001). A citizens' committee sued the U.S. Department of Justice and the Federal Bureau of Prisons, alleging that the defendants failed to comply with the National Environmental Policy Act (NEPA) when they awarded a contract to build and operate a new prison to a private company. The district court held that the committee had standing to bring the action and that the Bureau was required to prepare a final environmental assessment. According to the court, the Bureau "basically admitting that it had violated NEPA" ordered a halt to work on the facility and re-examined the environmental impact. The court held that the Bureau violated the provisions of NEPA when it initially awarded the contract. But the court found that the Bureau had cured its initial NEPA violations and was

not required to file an Environmental Impact Statement, and allowed the project to proceed. (Cornell Corrections, Inc., Federal Bureau of Prisons, Clearfield County, Pennsylvania)

U.S. District Court
TEMPERATURE

Covillion v. Alsop, 145 F.Supp.2d 75 (D.Me. 2001). An arrestee brought a § 1983 action alleging excessive use of force while he was confined. The district court found that the arrestee failed to show excessive use of force based on the allegedly freezing temperature of his holding cell. The arrestee had alleged that he had been placed in the cell "where they turned the freezer on." and implied that the jail administrator was responsible for cooling the cell. The court noted that the thermostat that controls the cell temperature also controls the temperature of the jail control room, booking room, and visitors' room. (Somerset County Jail, Maine)

U.S. District Court
ASBESTOS

Crawford v. Artuz, 143 F.Supp.2d 249 (S.D.N.Y. 2001). Prison inmates sued officials alleging that the officials did not make a sufficient response to problems caused by the presence of friable asbestos. The court entered judgment for the officials, finding that the inmates failed to show present or future prospects of injury from exposure to asbestos. (Green Haven Corr'l Fac., N.Y.)

U.S. Appeals Court
PLUMBING
SANITATION

Gaston v. Coughlin, 249 F.3d 156 (2nd Cir. 2001). A prisoner brought a § 1983 action alleging that his conditions of confinement violated the Eighth Amendment. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the prisoner's allegations regarding unsanitary conditions in his cell and exposure to below-freezing temperatures during winter due to unrepaired broken windows, were sufficient to state an Eighth Amendment claim. The prisoner alleged that mice were constantly entering his cell and that the area directly in front of his cell was filled with human feces, urine and sewage water for several days. (Auburn Correctional Facility, New York)

U.S. Appeals Court
ASBESTOS
SANITATION

Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging constitutional violations, including unhealthful conditions and exposure to asbestos. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate was precluded from recovering for emotional or mental damages because he failed to allege a physical injury. The inmate alleged that he was subject to cold showers, cold food, unsanitary dishes, insect problems, lack of adequate clothing, and the presence of an open "cesspool" near his housing unit. (East Carroll Detention Center, Louisiana)

U.S. District Court
ADA- Americans with
Disabilities Act

Navedo v. Maloney, 172 F.Supp.2d 276 (D.Mass. 2001). A state inmate brought § 1983 and Americans with Disabilities (ADA) actions against a state, a private medical care provider, and medical employees, alleging that their refusal to allow him access to a wheelchair and to disabled-accessible facilities violated his civil rights and caused severe and irreparable damage to his leg. The district court denied summary judgment for the defendants, in part, finding that fact issues remained as to the extent of the inmate's injuries, and denied qualified immunity to the state corrections commissioner. The commissioner had rejected the medical staff's recommendation that the inmate be transferred to another facility with appropriate accommodations and allegedly failed to maintain prisons in compliance with federal standards of accessibility. (Massachusetts Correctional Institution at Norfolk and Massachusetts Correctional Institution at Shirley)

2002

U.S. District Court
CROWDING
GENERAL
CONDITIONS

Bobbitt v. Detroit Edison Co., 216 F.Supp.2d 669 (E.D.Mich. 2002). An arrestee filed a § 1983 action in state court alleging that city police officers violated her constitutional rights in connection with her arrest for disorderly conduct. The district court granted summary judgment in favor of the defendants. The court held that the arrestee failed to establish liability with her allegations that a city jail was not clean, did not provide sufficient seating, and did not provide ready access to a telephone. According to the court, the arrestee's assertions that the city maintained inadequate policies for training and hiring its police officers, and that an arresting officer had been involved in one other incident of alleged misconduct, were insufficient to subject the city to liability under § 1983 for failing to provide adequate training. The arrestee alleged she was forced to stand for approximately five hours in a police holding cell, that the cell contained only a 4-inch concrete slab on which to sit, and that the slab was too low. (Eighth Precinct, Detroit Police Department, Michigan)

U.S. Appeals Court
CELL CAPACITY
SEPARATION

Burrell v. Hampshire County, 307 F.3d 1 (1st Cir. 2002). A pretrial detainee who was severely beaten by a fellow detainee brought a § 1983 action against a county and county officials, alleging deliberate indifference to his health and safety in violation of the Fourteenth Amendment. The detainee also alleged an Eighth Amendment violation resulting from failure to segregate violent and nonviolent detainees. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The detainee had told one jail official that he was threatened by a fellow detainee who had a history of assaults, but the officials failed to separate them. The court noted that the plaintiff told one official he had a black belt in martial arts and was a decorated war hero and never requested protective custody. The court found that the

county's policy of not screening or segregating potentially violent inmates from non-violent ones did not constitute deliberate indifference to the health and safety of detainees, because inmates were housed in single cells and were able to lock their cells from the inside at any time. (Hampshire County Jail/House of Corrections, Massachusetts)

U.S. Appeals Court
LIGHTS

Carney v. Craven, 40 Fed.Appx. 48 (6th Cir. 2002). A state prisoner brought a civil rights action under § 1983. The district court dismissed the action and the appeals court affirmed, as modified. The appeals court held that the prisoner failed to show that prison officials were deliberately indifferent to his request to fix a faulty light which was producing a strobe-like effect, and which allegedly caused him headaches and eye pain. The court noted that the prisoner's request to have the bulb repaired was not recklessly disregarded, but rather, a new light bulb was not immediately available, and the prisoner was ultimately moved to a new cell eleven days after reporting the problem. (Tennessee)

U.S. Appeals Court
VENTILATION

Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002). Inmates sued prison officials under § 1983 alleging violation of their Eighth Amendment rights. The district court denied summary judgment in favor of the defendants and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that correctional officers did not use excessive force when they used two bursts of pepper spray to quell fighting in a cell. But the appeals court found that summary judgment was precluded by fact questions on the issue of officials' potential deliberate indifference to the serious medical needs of inmates in nearby cells who were affected by pepper spray that drifted into their cells. The court noted that excessive force directed at one prisoner can also establish a cause of action for harm that befalls other prisoners. (Pelican Bay State Prison, California)

U.S. District Court
FIRE SAFETY

Derby Industries, Inc. v. Chestnut Ridge Foam, 202 F.Supp.2d 818 (N.D.Ind. 2002). A manufacturer of a mattress intended for use in prisons sued a competitor for false advertising. The district court denied the plaintiff's request for a preliminary injunction, finding that a video tape was neither false nor misleading, and that the plaintiff manufacturer was not being irreparably harmed. The court found that the video advertisement, which depicted a flammability test for its and a competitor's products, was not literally false, noting that the test was a general procedure which could be performed in several ways. The plaintiff identified only one customer who was confused, and their confusion was not substantial enough for the manufacturer to lose their business. (Derby Industries, Indiana)

U.S. Appeals Court
TEMPERATURE

Flores v. O'Donnell, 36 Fed.Appx. 204 (7th Cir. 2002). An inmate brought a § 1983 action against corrections officials alleging cruel and unusual punishment. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals held that while an issue of fact existed as to whether the duration and severity of cold in the inmate's cell was serious enough to implicate the Eighth Amendment, officials were not deliberately indifferent to the inmate's complaints about the cold. The court noted that in order to assess whether cold cell temperatures violated the Eighth Amendment, the court must consider factors that include the severity of the cold, its duration, whether the prisoner had alternatives means to protect himself from the cold, and the adequacy of such alternatives. According to the court, officials responded to the inmate's complaints by offering him clothing, three hours after he first complained of the cold, on the condition that he wear a mask to prevent him from spitting on officers. The inmate refused, and later received medical attention several times. (Waupun Correctional Facility, Wisconsin)

U.S. District Court
PLUMBING
CELL SIZE

Liles v. Camden County Dept. of Corrections, 225 F.Supp.2d 450 (D.N.J. 2002). Former inmates brought an action against county officials alleging that conditions of confinement violated their Eighth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that evidence did not support the claim that shower conditions caused the inmates to break out in rashes. Although the inmates presented an expert report of a "forensic sanitarian," the court noted that the report concluded only that the poor condition of the shower and lack of sanitation "may result" in rashes. The court held that a 22-day lock-down that caused inconvenience and discomfort to the inmates did not violate the Eighth Amendment, although the inmates were allowed only 20 minutes daily outside their cells to shower, use the bathroom, exercise and make phone calls. The court noted that the lock-down went into effect because an inmate had tried to escape out of a prison roof and the roof had to be prepared. The court found that summary judgment was precluded by fact issues as to whether fighting that broke out as the result of prisoners urinating on each other constituted a threat to the health and safety of the inmates. The inmates alleged that violence among inmates broke out when urine splashed on inmates who slept on cell floors next to toilets, due to crowding. (Camden County Correctional Facility, New Jersey)

U.S. District Court
TEMPERATURE

Moore v. Gardner, 199 F.Supp.2d 17 (W.D.N.Y. 2002). An inmate brought a pro se action against prison officials under § 1983 and § 1985, alleging mail tampering and unconstitutional conditions of confinement. The district granted summary judgment, in part, to the defendants, finding that

the alleged mail tampering did not result in an actual injury to the inmate. The court denied summary judgment for the defendants on the issue of whether the inmate was subjected to unconstitutionally cold conditions. The inmate alleged he was forced to live in a cold, drafty cell for three weeks during the winter, without his bed sheets and with only one blanket. (Southport Corr'l Facility, New York)

U.S. Appeals Court
CROWDING
CELL CAPACITY
FURNISHINGS
CELL SIZE

Oliver v. Keller, 289 F.3d 623 (9th Cir. 2002). A pretrial detainee brought a § 1983 action against a county sheriff and two jail employees, alleging confinement in unconstitutional conditions. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the detainee did not suffer more than a de minimis physical injury from his jail confinement and therefore could not make the required showing for the purpose of the Prison Litigation Reform Act (PLRA). But the appeals court held that the detainee was entitled to seek nominal and punitive damages under the Fourteenth Amendment. The detainee had admitted during a deposition that the back and leg pain he allegedly suffered from sitting and sleeping on benches and the floor of a temporary cell was not serious. The detainee had been temporarily confined on three separate occasions. In one instance he was confined in a temporary holding cell equipped with benches, toilets and sinks. Inmates eat three meals per day in the cell, and are not provided with cots, blankets or pillows. At one time the detainee was housed for 51 hours with approximately 50 other men in a cell measuring 404 square feet. He was transferred to another cell where he spent another 74 hours confined with an average of 18 prisoners in a cell that measured 174 square feet. The detainee described conditions in the cells as "a human carpet." (Clark Co. Det. Ctr., Nevada)

U.S. Appeals Court
LOCATION
ADA- Americans with
Disabilities Act

Regional Economic Community v. City of Middletown, 294 F.3d 35 (2nd Cir. 2002). A community action program brought a suit under the Fair Housing Act, Americans with Disabilities Act (ADA) and the Rehabilitation Act, after it was denied a special-use permit to establish two halfway houses for recovering alcoholics. The district court ruled in favor of the defendants. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the recovering alcoholics who would have been residents of the proposed halfway houses were disabled for the purposes of ADA, FHA and the Rehabilitation Act. The appeals court found that summary judgment was precluded by a prima facie case of retaliation and by genuine issues of material fact as to the reasons for denial of the permit. (City of Middletown, New York)

U.S. District Court
TEMPERATURE

Smith v. U.S., 207 F.Supp.2d 209 (S.D.N.Y. 2002). A federal prisoner filed an action under the Federal Tort Claims Act (FTCA) alleging that the Bureau of Prisons breached its duty to provide him with suitable quarters. The district court entered judgment for the government, finding no violation. The inmate alleged that the Bureau failed to adequately heat his cell and that it was so cold that he could see his breath, that his knees swelled and his arthritis worsened, and that he suffered severe stress, anxiety and panic attacks. The court found credible evidence that the cell temperature was within the normal range, and that prison officials immediately responded to the prisoner's complaints by raising the thermostat, checking the heating system, insulating the window, providing extra blankets and a portable heater, and transferring the prisoner to another cell. (Witness Security Unit, Federal Correctional Institution, Otisville, New York)

2003

U.S. Appeals Court
DOUBLE-CELLING
SPECIAL CELL

Alexander v. Tippah County, Miss., 351 F.3d 626 (5th Cir. 2003). Two state prisoners brought a § 1983 action alleging unconstitutional conditions of confinement. The district court dismissed the case and the appeals court affirmed. The appeals court held that the prisoners could not recover for mental or emotional damages as a result of their twenty-four hour placement in an unsanitary isolation cell, where the only claimed injury was nausea suffered by one prisoner that was not severe enough to warrant medical attention. The isolation cell, referred to as "the hole," was a sparse eight-by-eight concrete room without running water or a toilet. The only sanitary facility was a grate-covered hole in the floor that could be flushed from the outside, and the only bed was a concrete protrusion in the wall wide enough for one person. The prisoners were not provided with a mattress, sheets, or blankets, but they conceded that the cell was clean and dry when they were placed in it. They were initially stripped of their clothes but were eventually given boxer shorts to wear. (Tippah County Detention Facility, Mississippi)

U.S. District Court
FACILITY DESIGN
SECURITY

Govan v. Campbell, 289 F.Supp.2d 289 (N.D.N.Y. 2003). An inmate filed a pro se action alleging that county officials violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the inmate's alleged conditions, consisting of unclean shower stalls with rust bubbles, cockroaches that crawled into his orifices while he slept, wild birds that were flying free through the facility, and an unsafe condition that resulted from the on-duty officer's inability to see directly into his cell at all times, did not rise to the level of a constitutional violation. The inmate also alleged that a correctional officer was sleeping while he was supposed to be supervising recreation in a gym. The court noted that the inmate did not assert how he was actually harmed by the conditions. (Albany County

U.S. Appeals Court
CELL SIZE
DOUBLE CELLING

Hurst v. Snyder, 63 Fed.Appx. 240 (7th Cir. 2003) [unpublished]. A state prison inmate brought an action against prison officials, alleging that he was deprived of adequate living space. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed. The appeals court held that a former state statute that required prison facilities to provide at least 50 square feet of cell space per person did not give the inmate a protected liberty interest in having 50 square feet of cell space. The court found that the amendment of the statute, to delete the express reference to a "per person" space requirement, did not violate the ex post facto clause. (Menard Correctional Center, Illinois)

U.S. District Court
PRIVACY

Simpson v. Penobscot County Sheriff's Dept., 285 F.Supp.2d 75 (D.Me. 2003). A former county jail inmate brought a § 1983 action alleging violation of his right to privacy, his right to medical treatment, and his right to seek redress during his placement in administrative segregation. The district court granted summary judgment in favor of the defendants. The court held that the Due Process Clause did not afford a remedy under § 1983 for the alleged invasion of privacy of a county jail inmate who was placed in a cell that did not have a privacy partition next to the toilet. The toilet's placement in the cell allowed female inmates, at separate intervals, to have a direct view of him while he was performing bodily functions. The court noted that jail officials did not know about the problem, and that once the inmate made them aware of it, they investigated and mitigated the problem by placing a removable piece of magnetic paper over the lower door window. The court found that the officials did not know about the problem until the inmate submitted a grievance in September 2002, although the inmate would have previously had access to the jail supervisors on their daily tours of the facility three times each day, providing him with 51 opportunities to raise the issue before he filed his grievance. (Penobscot County Jail, Maine)

2004

U.S. District Court
DOUBLE CELLING

Baker v. Haun, 333 F.Supp.2d 1162 (D.Utah 2004). Injunctive relief was granted prohibiting the practice of double-celling in certain areas of a prison, in a state prison inmates' class action challenging their conditions of confinement. The prison moved to terminate the injunction under the provisions of the Prison Litigation Reform Act (PLRA). The district court held that the continuation of the injunction was not warranted where there was no evidence of any present unwillingness on the part of prison officials to comply with the injunction. The court found that prison officials who resumed double-celling in one area without court permission did not engage in contemptuous conduct because the officials had renovated the area in accordance with court requirements. (Wasatch Unit, Utah State Prison)

U.S. District Court
CROWDING
SANITATION
VENTILATION

Brown v. Mitchell, 327 F.Supp.2d 615 (E.D.Va. 2004). The administratrix of the estate of a jail inmate who contracted and died from bacterial meningitis while in jail brought a civil rights action. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether the city had a policy or custom of jail mismanagement, and whether any policy or custom caused the inmate's death. The court also found that there were fact issues as to whether the sheriff violated the Eighth Amendment regarding jail overcrowding. The court ordered further proceedings to determine if the city council was aware of the long history of overcrowding, poor ventilation and structural defects in the jail. The court found that the sheriff did not violate the Eighth Amendment by failing to maintain sanitation in the jail, because sanitation deficiencies were caused by overcrowding, not by her failure to perform. The sheriff was also not found liable for failure to train her staff, where she had an illness-recognition and response program in place which consisted of initial and follow-up training, combined with surprise inspections. The court noted that the guards' failure to respond to the obvious illness of the inmate could be attributed to their failure to apply their training, for which the sheriff was not responsible. The court held that summary judgment was precluded by material issues of fact as to whether the jail physician showed deliberate indifference when he ordered the inmate returned to overcrowded and ill-ventilated quarters, essentially without treatment. (Richmond City Jail, Virginia)

U.S. Appeals Court
TEMPERATURE

Chandler v. Crosby, 379 F.3d 1278 (11th Cir. 2004). Death row inmates brought a class action against state prison officials, alleging that high temperatures in their prison cells during the summer months amounted to cruel and unusual punishment. The district court denied relief following a bench trial and the inmates appealed. The appeals court affirmed, finding that the inmates failed to satisfy the objective component of their Eighth Amendment claim. The court found that the heat was not constitutionally excessive because the building mass generally remained between 80 degrees at night, and 85 to 86 degrees during the day. During the relevant period, the unit experienced temperatures over 90 degrees only nine percent of the time, recorded temperatures over 95 degrees only seven times, and never recorded temperatures over 100 degrees. The court noted that the building, although not air conditioned, had an effective ventilation system, and numerous conditions such as access to cold water, alleviated rather than exacerbated the heat. (Union Correctional Institution, Florida)

U.S. Appeals Court
LIGHTS

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004). A death row prisoner brought a suit on behalf of himself and other prisoners confined to death row, alleging that certain conditions of confinement on death row violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court found that a number of conditions violated the Eighth Amendment and issued an injunction designed to alleviate the conditions. The defendants appealed. The appeals court affirmed in part and vacated in part. The court found that lighting in each death row cell was less than twenty foot-candles, in violation of the constitutional rights of the class members. Expert testimony was presented that lighting in the cells was grossly inadequate for the purposes of sanitation, personal hygiene and reading, and that these conditions contributed to further mental health deterioration. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. Appeals Court
FIRE SAFETY

Hadix v. Johnson, 367 F.3d 513 (6th Cir. 2004). State inmates filed a class action under § 1983 alleging that their conditions of confinement violated their constitutional rights. Their claims were settled by a consent decree. The district court denied prison officials' motion to terminate the consent decree and issued an injunction ordering the departmentalization of facilities as a fire safety remedy. The officials appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the consent decree encompassed the cell blocks in question but that the district court judge abused his discretion when he found that current conditions violated the Eighth Amendment, because the court incorporated its principal findings from two years earlier, despite the fact that a number of issues had since been resolved. The appeals court also noted that the district court did not state the standard it was applying to find that conditions relating to fire safety and fire prevention were inadequate, and failed to identify the point at which certain fire safety deficiencies ceased being mere deficiencies and instead became constitutional violations. (State Prison of Southern Michigan, Central Complex)

U.S. Appeals Court
TEMPERATURE

Jones-El v. Berge, 374 F.3d 541 (7th Cir. 2004). Prisoners of a "supermax" prison brought a suit challenging their conditions of confinement. After the plaintiff class was certified and a preliminary injunction was entered, a consent decree was approved by the court. The prisoners subsequently moved to enforce the decree. The district court entered an order directing the installation of air conditioning and the defendants appealed. The appeals court affirmed, finding that the district court's order was not a grant of "prospective relief" that was subject to the requirements of the Prison Litigation Reform Act (PLRA). (Wisconsin Secure Program Facility)

U.S. Appeals Court
CELL SIZE

Magluta v. Samples, 375 F.3d 1269 (11th Cir. 2004). A former pretrial detainee brought an action against federal officials asserting constitutional claims relating to the conditions of his confinement. The district court dismissed several defendants for lack of jurisdiction and dismissed the case against the remaining defendants for failure to state a claim. The detainee appealed. The appeals court vacated and remanded. On remand, the district court dismissed the detainee's first amended complaint and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee stated a claim that he suffered unconstitutional conditions of confinement and that the defendants were not entitled to qualified immunity. The detainee alleged that he was confined under extremely harsh conditions, that he was placed in solitary confinement and locked in an extremely small closet-sized space, with minimal contact with other human beings for a prolonged time that exceeded 500 days. The detainee alleged that the harsh conditions were imposed solely for the sake of punishment. The court noted that ample federal caselaw existed at the time of the challenged conduct to give fair warning to officials that it was unconstitutional to hold a detainee in solitary confinement 500 days, for punishment, with virtually no procedural protection in the form of periodic reviews. (United States Penitentiary, Atlanta, Georgia)

U.S. Appeals Court
HANDICAPPED
CELL SIZE

Miller v. King, 384 F.3d 1248 (11th Cir. 2004). A paraplegic state prisoner brought a § 1983 action alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court granted summary judgment for the defendants on most of the claims, and following a jury trial entered judgment for a disciplinary hearing officer on the remaining claims. The prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues, as to whether the prisoner was afforded basic levels of humane care and hygiene, precluded summary judgment on the prisoner's § 1983 claims for monetary damages and injunctive relief under the Eighth Amendment. According to the court, the prisoner was "disabled" within the meaning of ADA and had standing to seek injunctive relief against a prison warden. The prisoner was due to remain in isolation for over eight years as the result of more than 180 disciplinary reports. Able-bodied inmates in disciplinary isolation are housed in less stringent units than the building in which the prisoner was housed. Because of the small cell size in his unit, prison policy calls for beds to be removed daily so that wheelchair-bound inmates have some minimal area within which to move around in their cells. The prisoner alleged that there was no room in his cell, making him immobile and restrained for long periods of time, and that prison staff failed to remove the bed from his cell daily. The prisoner also alleged that the showers in the housing unit are not wheelchair-accessible. (Georgia State Prison)

U.S. District Court
ASBESTOS

Pack v. Artuz, 348 F.Supp.2d 63 (S.D.N.Y. 2004). A state prisoner brought a pro se § 1983 action alleging failure to protect him from exposure to potentially dangerous levels of asbestos. The district court held that there was no evidence that the prisoner's Eighth Amendment rights were violated, absent evidence that the level of exposure posed an unreasonable risk of serious damage to his immediate or future health. According to the court, there was no evidence of either the intensity or duration of the alleged exposure in most of the cell block, and even in areas where exposure was assumed, there was no evidence as to the concentration of airborne asbestos fibers or that the inmate had an asbestos-related disease. (Green Haven Correctional Facility, New York)

2005

U.S. Appeals Court
VENTILATION

Board v. Farnham, 394 F.3d 469 (7th Cir. 2005). Arrestees who were detained in a county jail following their arrest on murder charges brought a civil rights action against a county sheriff and jail staff following their acquittal and release from jail. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed. The appeals court held that the sheriff was not entitled to qualified immunity on the claim that he violated a detainee's right to receive adequate attention for a serious medical condition, when he allegedly deprived one detainee of toothpaste for over three weeks and another detainee for over 113 days. One detainee suffered dental pain throughout his incarceration and had to have several teeth extracted because of tooth decay. The court denied qualified immunity for jail staff who allegedly deprived a detainee of his asthma inhaler on multiple occasions. The court also denied qualified immunity on the claim that they failed to provide humane health conditions as the result of the allegedly unhealthy condition of the jail's ventilation system. The detainees alleged that the flow of black fiberglass from the ventilation system caused nosebleeds and respiratory problems, and allegedly exacerbated the serious asthma condition of one detainee. (Edgar County Jail, Illinois)

U.S. Appeals Court
SANITATION

Hearns v. Terhune, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that prison officials failed to protect him from attacks by other inmates. The inmate had been beaten and stabbed in a prison chapel by inmates who belonged to another Muslim group. The court held that the inmate's allegations stated a claim that conditions were sufficiently serious to form the basis for an Eighth Amendment violation. The inmate alleged that there was a lack of drinkable water in the prison yard, where temperatures exceeded one hundred degrees. The inmate also alleged that conditions in disciplinary segregation created serious health hazards, including toilets that did not work, sinks that were rusted, and stagnant pools of water that were infested with insects. (Calipatria State Prison, California)

U.S. Appeals Court
CELL CAPACITY
CROWDING

Hubbard v. Taylor, 399 F.3d 150 (3rd Cir. 2005). Pretrial detainees filed a suit under § 1983, challenging the conditions of their confinement on Fourteenth Amendment due process grounds. The district court granted summary judgment in favor of the defendants and the detainees appealed. The appeals court vacated and remanded. The court held that the district must employ the "due process" analysis to determine whether the conditions of confinement amounted to "punishment" that was improperly imposed prior to the adjudication of guilt, not the Eighth Amendment standards regarding cruel and unusual punishment. The detainees challenged the practice of triple-celling three detainees to a cell that had been designed to be occupied by a single person, which required one of the occupants to sleep on the floor in proximity to a toilet. (Multi-Purpose Criminal Justice Facility, Gander Hill, Delaware)

U.S. District Court
LIGHTS

King v. Frank, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the inmate and concluded that he suffered no ill effects. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
TEMPERATURE
VENTILATION

Moody v. Kearney, 380 F.Supp.2d 393 (D.Del. 2005). A state inmate filed a § 1983 action alleging that prison officials locked him in an unventilated room, causing him to suffer a severely debilitating heat stroke. The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded. On remand, the district court granted summary judgment for the defendants in part, and denied it in part. The court held that the inmate stated a claim for deliberate indifference to his serious medical needs and that fact issues remained as to whether a private contractor that provided medical services for the prison had a policy of not protecting vulnerable inmates from high temperatures. The inmate alleged that he was receiving

anticholinergic medication and was therefore particularly vulnerable to heat stroke, and that prison officials knew about this vulnerability but acted with deliberate indifference by keeping him in a room with no windows, no ventilation, or access to running water when the temperature inside the facility was 120 degrees. (State Correctional Institution, Georgetown, Delaware)

U.S. District Court
LIGHTS
WINDOWS

Scarver v. Litscher, 371 F.Supp.2d 986 (W.D.Wis. 2005). A state prison inmate sued officials seeking damages for their alleged indifference to his illness and challenging his conditions of confinement. The district court entered judgment in favor of the officials. The court held that the officials did not show deliberate indifference to the inmate's mental illness condition, because he was examined and prescribed various antipsychotic medications. The inmate alleged that the only deficiency in his treatment was that officials failed to provide art supplies when they were requested. The court found that there were fact issues as to whether the inmate was subjected to conditions that were severe enough to violate the Eighth Amendment, but that the officials had qualified immunity from the inmate's damages suit. The court held that placing the mentally ill inmate in a continuously-illuminated maximum security cell without windows was not clearly established to be an Eighth Amendment violation at the time they placed the inmate in the most extreme isolation section of the maximum security prison. (Wisconsin Secure Program Facility)

U.S. Appeals Court
SANITATION

Surprenant v. Rivas, 424 F.3d 5 (1st Cir. 2005). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging that he was falsely accused of an infraction, deprived of due process in disciplinary proceedings, and subjected to unconstitutional conditions of confinement. A jury found the defendants liable on three counts and the district court denied judgment as a matter of law for the defendants. The defendants appealed. The appeals court affirmed. The court held conditions of confinement were shown to be constitutionally deficient, where the detainee was placed in around-the-clock segregation with the exception of a five-minute shower break every third day, all hygiene items were withheld from him, he could only access water--including water to flush his toilet--at the discretion of individual officers, and was subjected daily to multiple strip searches that required him to place his unwashed hands into his mouth. (Hillsborough County Jail, New Hampshire)

U.S. District Court
LIGHTS

Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action alleging that constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The court denied the motion. The court held that the constant illumination did not constitute an unsafe condition of confinement and that the defendants established a valid security purpose for the lighting. The inmate alleged that the low wattage bulb prevented his sleep, but conceded that it was not bright enough to read or write by. (California State Prison, Corcoran)

2006

U.S. District Court
CONSENT DECREE
EQUIPMENT

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Corr'l Facility, New York)

U.S. District Court
CONSENT DECREE
EQUIPMENT

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned

device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. Appeals Court
PADDED CELLS

Hanks v. Prachar, 457 F.3d 774 (8th Cir. 2006). A former county jail detainee brought a § 1983 action against county jail officials, alleging violation of his due process rights in connection with the use of restraints and confinement, requesting damages and injunctive relief. The district court granted summary judgment in favor of the officials and the former detainee appealed. The appeals court affirmed the grant of summary judgment on the claims for injunctive relief, reversed the grant of summary judgment on the claims for damages, and remanded for further proceedings. The court held that the detainee's claim for injunctive relief was rendered moot by detainee's release from jail. The court found that summary judgment was precluded by genuine issues of material fact as to whether the detainee was restrained in shackles and chains or confined in a padded unit for the purpose punishment, or for valid reasons related to legitimate goals. The detainee alleged he was placed in four-point restraints, chained to a wall in a "rubber room," forced to shower in waist chains and shackles, and denied hearings before being punished. The detainee was 17 years old when he was admitted to the jail. (St. Louis County Jail, Minnesota)

U.S. District Court
CELL CAPACITY
DOUBLE CELLING

Jones v. Goord, 435 F.Supp.2d 221 (S.D.N.Y. 2006). Inmates brought an action against New York prison officials, challenging the double-celling policy at maximum-security prisons. Double-celling is a practice in which two prisoners are housed in a cell originally designed for one person. The complaint was filed in 1995, and was effectively stayed for some time pending litigation of a companion case challenging the same practice in medium security prisons. After a full trial on the merits, the district court in the medium security case denied the plaintiffs any relief. The district court dismissed all of the inmates' class claims, but reserved decisions on individual plaintiffs' claims for damages under the Eighth Amendment and the First Amendment. The court held that the practice of double-celling, and the undesirable conditions allegedly created by double-celling of inmates, including facts that inmates were forced to sleep near a toilet, were exposed to cellmates' odors, and kept excess personal property in their cells, did not violate the Eighth Amendment. The court found that Muslim inmates' claim that double-celling interfered with their First Amendment right to free exercise of religion was not moot after they were no longer being double-celled, where many of the inmates were double-celled on numerous occasions for short periods of time, and the policy of double-celling inmates continued. The defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. The court noted that the Eighth Amendment does not guarantee prisoners freedom from any and all sorts of unsavory environs, and that to the extent that conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

According to the court, the practice of double-celling inmates did not result in a substantial risk of serious harm to inmates due to violence, in violation of the Eighth Amendment, where incident reports indicated that six years after the implementation of the double-celling policy, inmates generally faced a lower risk of assault than they did before the policy was implemented, and there was no evidence that any under-reporting of assaults affected the reporting of incidents in double cells more than the reporting of incidents generally.

The court also found that injury and disease allegedly caused by double-celling did not create an unreasonable risk of serious damage to inmates' health, in violation of the Eighth Amendment, noting that although nine inmates had been injured getting into or out of the top bunk in their cells, and six inmates caught colds from their cellmates, there was no evidence that the design or placement of the bunks was unsafe, or that any inmate actually contracted, or was even exposed to, a serious disease from his cellmate in a double cell.

The court held that alleged mistakes made by New York prison officials in screening dangerous inmates before placing them in double cells in maximum security prisons did not show that New York's double-celling policy subjected inmates to a substantial risk of serious harm, in violation of the Eighth Amendment, where the rate of inmate assaults had declined in the six years after the double-celling policy was implemented. (New York Department of Correctional Services)

U.S. District Court
HANDICAPPED

Partelow v. Massachusetts, 442 F.Supp.2d 41 (D.Mass. 2006). A state prisoner whose leg had been amputated brought an action against numerous defendants, including a county correctional center and sheriff, alleging that failure to provide him with handicapped-accessible shower

facilities during the renovation of his housing unit violated his federal and state civil rights. The district court granted summary judgment in favor of the defendants. The court held that the officials provided alternative accessible facilities, precluding claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The court noted that officials provided the prisoner with a chair for use in the standard shower, assigned him to a housing unit with handicapped-accessible showers, promptly transferred him back to his original unit at his request, and ultimately made arrangements for him to shower in the medical unit. The court held that the prisoner could not establish an Eighth Amendment claim, where officials allowed the prisoner to shower in medical unit and made other such accommodations imposing only minor impediments and delays. The court found that the transfer of the prisoner to a maximum security housing unit in order to place him near a handicapped accessible shower was not in retaliation for the prisoner's exercise of constitutional rights, as would violate § 1983. (Hampden Co. Corr'l Center, Massachusetts)

U.S. Appeals Court
LIGHTS
NOISE

Scarver v. Litscher, 434 F.3d 972 (7th Cir. 2006). A state prisoner brought a civil rights action against officials at a "supermax" prison, alleging that his conditions of confinement had aggravated his mental illness. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court affirmed, finding that the officials did not unconstitutionally subject the prisoner to cruel and unusual punishment, absent evidence that they knew that the conditions were making his mental illness worse. According to the court, prison authorities must be given considerable latitude in the design of measures for controlling homicidal maniacs without exacerbating their manias beyond what is necessary for security. The prisoner alleged that the heat in the cells in the Summer interacted with the his antipsychotic drugs and caused him extreme discomfort, and that the constant illumination of the cells also disturbs psychotics. The prisoner alleged that the low level of noise, without audiotapes, a radio, or any source of sound, prevented him from stilling the voices in his head. (Wisconsin Secure Program Facility)

U.S. Appeals Court
TEMPERATURE

Spencer v. Bouchard, 449 F.3d 721 (6th Cir. 2006). A former pretrial detainee brought a pro se § 1983 action against a county sheriff and officials of the sheriff's office, alleging overcrowding and inadequate shelter at the jail in violation of Due Process Clause. The district court granted summary judgment for the defendants, and detainee appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that the detainee's evidence that county officials had failed to address serious and obvious problems with conditions, namely a continuously cold and wet cell area, for a period of months, especially given additional evidence including officials' alleged wearing of winter coats inside jail, raised a fact issue as to whether officials had been deliberately indifferent to a serious deprivation, precluding summary judgment for the officials. (Oakland County Jail, Michigan)

2007

U.S. District Court
FURNISHINGS
ODOR
BEDS
TEMPERATURE

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that dismissal of the detainee's § 1983 claims of cruel and unusual punishment at the District of Columbia jail based on lack of reading material, lack of recreational equipment, failure of the commissary to stock items such as lotions, skin oils, hair oils, and peanut butter, the detainee's exposure to the stench created by regular sewage backups, as well as the jail's use of bunk beds without ladders was required under the Prison Litigation Reform Act (PLRA) because the detainee did not allege that he suffered any physical injury. Instead, the detainee alleged mental and emotional injuries. According to the court, the alleged conditions from overcrowding at a District of Columbia jail-- showers infested with bacteria, standing water, various diseases and hundreds of unsanitary and defective mattresses, some of which contained roaches and other insects, did not constitute the deprivation of basic human needs, as required for jail overcrowding to constitute cruel and unusual punishment. The court found that the detainee's allegations that due to lack of heating and ventilation at the jail he suffered from temperatures ranging from 30 to 40 degrees during the winter, that he was not provided with sufficient blankets for cold jail cells, and that such actions were taken with deliberate indifference to his needs and pursuant to policy of Department of Corrections (DOC) were sufficient to state a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court noted that warmth is a basic human need, the deprivation of which can amount to a violation of Eighth Amendment protection against cruel and unusual punishment. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
FACILITY DESIGN

Bullock v. Sheahan, 519 F.Supp.2d 760 (N.D.Ill. 2007). Male former inmates of a county jail brought a class action against a county and a sheriff, alleging that the defendants had a policy and/or practice of subjecting male inmates to strip-searches prior to their release, and that such differing treatment of male inmates violated their rights under the Fourth and Fourteenth Amendments. The defendants moved to strike the plaintiffs' expert. The district court denied the motion, finding that the expert's testimony was admissible. According to the court, the expert testimony of a registered architect who specialized in the design of prisons and jails, concerning whether there was adequate space in the jail for the construction of additional bunnies to hold male detainees was relevant and reliable. The court noted that while the expert did not review all of the written discovery in the case, the expert reached his opinions after a tour of the jail and after reviewing other expert reports, jail floor plans, a sheriff's status report and charts summarizing certain computer records on male detainees. (Cook County Department of Corrections, Illinois)

U.S. District Court
FACILITY DESIGN
SUICIDE

Estate of Puza v. Carbon County, 586 F.Supp.2d 271 (M.D.Pa. 2007). The estate of a pretrial detainee who committed suicide brought an action alleging civil rights violations against a county and its corrections officers, and negligence claims against the architect of a county prison. The defendants moved for summary judgment and the district court granted the motion. The court held that correctional and intake officers were not deliberately indifferent to the pretrial detainee's vulnerability to suicide, as was required for the officers' liability under the due process clause for the detainee's suicide. The court held that under the Pennsylvania negligence law, architects who designed the jail had no duty to prevent the suicide of the detainee who strangled himself by tying his shoelace to a ventilation grate above a toilet and applying pressure to his neck. According to the court, there was no direct causal connection between any alleged negligence by the architects and the detainee's suicide. According to the court, while Pennsylvania courts had not addressed this specific issue, other jurisdictions have held that an architect cannot be held liable for a prison suicide: (1) in an Oregon case "We refuse to extend suicide liability to architects, contractors, engineers, and a vast array of other parties involved with the design and construction of buildings...Architects and contractors should not be exposed to endless suicide liability when they have relinquished their authority and control over the facility to the owner;" (2) in an Illinois case "The magnitude of the burden placed on architects to eliminate all fixtures, such as grilles, that might be of aid in the commission of a suicide and, at the same time, to design an attractive and feasible cell at a reasonable cost would seem to be great;" and in an Alabama case "We hold ... that an architect designing a prison or jail owes no duty to design the prison or jail to be suicide-proof." (Crabtree, Rohrbaugh & Associates, Carbon County Prison, Pennsylvania)

U.S. District Court
SAFETY

Graham v. Poole, 476 F.Supp.2d 257 (W.D.N.Y. 2007). A state prisoner brought a § 1983 action against prison officials. The officials moved to dismiss and the district court granted the motion. The court held that the prisoner's allegations that he slipped and fell as he was leaving the shower due to the failure of prison employees to provide non-slip mats on the floor in and near the shower amounted to nothing more than negligence, and thus was insufficient to state an Eighth Amendment claim against the employees. The court found that the prisoner failed to allege that a prison superintendent was personally involved in any alleged Eighth Amendment violation, as required to state a § 1983 claim against the superintendent. The prisoner alleged that following his accident, the superintendent instituted a policy providing an additional towel to each cell to be utilized for a bath mat, but did not allege that the superintendent was aware of any hazardous condition prior to prisoner's accident. (Five Points Correctional Facility, New York)

U.S. District Court
TEMPERATURE

Hadix v. Caruso, 492 F.Supp.2d 743 (W.D.Mich. 2007). Prisoners brought a suit to correct unconstitutional prison conditions necessary for prisoner health and safety, and requested injunctive relief as to a heat-related injury. The district court entered an injunction. The court held that prison officials may not, consistent with Eighth Amendment values, cause the expected deaths of prisoners subject to heat-illness by exposing them to high heat and humidity conditions. According to the court, the requirements for safe Eighth Amendment custody are violated by housing high-risk inmates in facilities which are routinely at heat index levels above 90 during summer months, when it is known that such heat conditions will reliably cause heat injury and death. The court ruled that the prisoners were entitled to an injunction requiring that all prisoners classified at high-risk for heat-related injury be housed in areas in which the heat index was reliably maintained below a heat index of 90. The court noted that the injunction was necessary to prevent irreparable harm, including bodily injury and death, and that the scope of the injunction was narrowly tailored and was the least intrusive means of correction of the Eighth Amendment violation. (Southern Michigan Correctional Facility, Charles E. Egeler Correctional Facility)

U.S. District Court
CELL SIZE
DOUBLE CELLING

Jurado Sanchez v. Pereira, 525 F.Supp.2d 248 (D.Puerto Rico 2007). A prisoner's next of kin brought a civil rights action under § 1983 against prison officials, seeking to recover damages for the prisoner's death while he was incarcerated, and alleging constitutional rights violations, as well as state law claims of negligence. The officials moved for summary judgment on the cause of action under § 1983. The district court denied the motion, finding that summary judgment was precluded by the existence of genuine issues of material fact on the failure to protect claim and as to whether the officials had qualified immunity. According to the court, genuine issues of material fact existed as to whether there were enough guards at the prison when the prisoner was killed by another inmate, and whether officials were mandated to perform weekly or monthly searches of cells, which could have prevented the accumulation of weapons used in the incident in which the prisoner was killed. Bayamon 308, an intake center, was considered minimum security with some limitations. The inmate capacity at Bayamon 308 is 144. Although the capacity was not exceeded, some cells, despite being originally built for one inmate, housed two inmates. According to the court, Bayamon 308 does not comply with the 55 square footage minimum requirements for each cell in a continuing federal consent order. Therefore, the individual cell gates are left continuously open, like an open dormitory. At the time of the incident officials did not take gang affiliation into consideration when segregating prisoners. The prisoner did not identify himself as a gang member, nor inform officials that he feared for his life. The facility was under court order to follow a staffing plan that stated the minimum amount of staff, the optimum amount, the fixed positions and the movable positions, pursuant to a lawsuit. Fixed positions, such as control units, cannot be changed under any circumstances, but the movable positions may be modified depending on necessity due to the type of inmate at the facility. The plaintiffs alleged that the defendants did not comply with the staffing plan, while the defendants insisted that they did comply. (Bayamon 308 Facility, Puerto Rico)

U.S. District Court
EQUIPMENT
SUICIDE

Justus v. County of Buchanan, 517 F.Supp.2d 810 (W.D.Va. 2007). The administrator of a pretrial detainee's estate filed a § 1983 action against a sheriff and county jail employees arising out of the detainee's jail suicide. The detainee had a history of schizophrenia, bipolar disorder, anxiety, paranoia, and delusions and had been hospitalized for these conditions several times in the three years prior to his suicide. His treatment records show that he was hospitalized because family members reported suicidal ideation and bizarre, violent, and sexually inappropriate behavior. The defendants moved for summary judgment. The district court granted the motion.

The court held that the sheriff's deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to deliberate indifference to the detainee's serious bodily injuries, in violation of the detainee's due process rights. The court noted that, even though the detainee was still alive when they took him down approximately 13 minutes after discovering him, there was no showing of an affirmative causal link between their inaction and the detainee's death from hypoxic brain injury. The court held that a reasonable sheriff would not have understood from existing law that the absence of an operating video surveillance system in the county jail would violate a suicidal pretrial detainee's constitutional rights, and thus the sheriff was entitled to qualified immunity from liability under § 1983, even though the jail policy and procedure manual required immediate repair of any defective security equipment, and the sheriff was aware that the equipment had not been operating for some time. (Buchanan County, Virginia)

U.S. District Court
LIGHTS

Maddox v. Berge, 473 F.Supp.2d 888 (W.D.Wis. 2007). A state prisoner brought a civil rights action under § 1983 against prison officials and employees, alleging that his administrative confinement for participating in a riot violated his Eighth and Fourteenth Amendment rights. The court found that allegations that the prisoner was confined to his cell 23 hours a day and that he was denied "outside recreation" while he was in administrative confinement demonstrated injuries from an objectively serious deprivation, for the purposes of his conditions or confinement claim. The court held that the allegation that the prisoner was subjected to 24-hour illumination stated a claim for violation of his Eighth Amendment rights, although the prisoner did not allege that he suffered any adverse effects as a result of the lighting. The district court held that placement of the prisoner in administrative confinement, which subjected him to highly restricted non-face-to-face visits, lack of communication with other prisoners, nearly complete idleness in a cell that was constantly illuminated, lack of recreation, extremely limited out of cell time, and lack of access to any meaningful programming, was not clearly established as conduct that violated a prisoner's Eighth Amendment rights, and therefore the warden and secretary of the corrections department had qualified immunity from the prisoner's damages suit under § 1983. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
CROWDING
COURT ORDER
CAPACITY

Roberts v. Mahoning County, 495 F.Supp.2d 719 (N.D. Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at one of two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners alleging that conditions of confinement at those facilities were unconstitutional. The district court held that there was clear and convincing evidence that crowding was the primary cause of the violation of a federal right, and that no other relief besides a prisoner release order would remedy that violation. The release order provided for incarceration of all violent felons and for reopening of all jail facilities under the control of the county to maximum occupancy, while at the same time protecting the constitutional rights of inmates in the county jail facilities. (Mahoning County Justice Center, Ohio)

2008

U.S. Appeals Court
TEMPERATURE
VENTILATION

Bibbs v. Early, 541 F.3d 267 (5th Cir. 2008). A state inmate brought a claim under § 1983 against corrections officers alleging that he was subjected to severe cold in retaliation for filing grievances. The district court granted the officers' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether subjecting the inmate to four straight nights of 20-degree temperatures was sufficiently severe to deter the inmate from filing future grievances. The court also found a genuine issue of material fact as to whether the inmate's actions of writing grievances against corrections officers caused the officers to retaliate by turning on "purge" fans, subjecting the inmate to cold temperatures. (Clements Unit, Amarillo, Texas)

U.S. District Court
PLUMBING
SANITATION

Cockcroft v. Kirkland, 548 F.Supp.2d 767 (N.D. Cal. 2008). A state inmate brought a pro se § 1983 action against prison officials, alleging Eighth Amendment violations related to toilet and cleaning supply problems. The district court dismissed the action in part. The court held that the defendants were not entitled to qualified immunity from claims that they refused to give the inmate adequate supplies and tools to sanitize his toilet in response to a widespread backflushing toilet problem caused by a design defect, in which sewage would rise up in the toilet of a cell when the toilet in an adjoining cell was flushed. According to the court, the officials' conduct, as alleged, violated the prisoner's clearly established rights under the Eighth Amendment to a minimum level of cleanliness and sanitation. (Pelican Bay State Prison, California)

U.S. District Court
BEDS

Connolly v. County of Suffolk, 533 F.Supp.2d 236 (D. Mass. 2008). An inmate who fractured his arm after falling from a bunk bed in his cell sued a county, alleging negligence under state law and Eighth Amendment violations under § 1983. The district court entered summary judgment for the county. The court held that the failure of prison officials to equip the inmate's bunk bed with a ladder was not cruel and unusual punishment and that failure to provide ladders for prison bunk beds did not constitute deliberate indifference to the inmate's rights. (Suffolk County House of Corrections, Massachusetts)

U.S. District Court
LIGHTS

Davis v. Peters, 566 F.Supp.2d 790 (N.D. Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that requiring the detainee to sleep in a room illuminated by a night light did not violate the detainee's substantive due process rights. (Treatment and Detention Facility, Illinois)

U.S. District Court NOISE TEMPERATURE	<p><i>Osterback v. McDonough</i>, 549 F.Supp.2d 1337 (M.D.Fla. 2008). Inmates sued corrections officials, alleging that conditions of close management (CM) status amounted to cruel and unusual punishment. Following the grant of the inmates' motion to certify the class, and issuance of an order entering the officials' revised offer of judgment (ROJ), the officials moved to terminate the ROJ pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion. The court found that housing provided to inmates on close management (CM) status did not violate the Eighth Amendment, even though the inmates' expert concluded that CM cells were not appropriate due to extreme heat in summer and cold temperatures in winter, inasmuch as the inmates were not subjected to extreme deprivations. The court found that restrictions on the ability of inmates on close management status to speak to each other, including a ban on shouting, did not violate the Eighth Amendment, in that inmates had adequate opportunities to communicate with each other, allowing inmates to speak loudly would jeopardize security, and there were no ready alternatives to prohibiting yelling or other disruptive behavior. (Everglades Correctional Institution, Florida)</p>
U.S. Appeals Court ADA- Americans with Disabilities Act SHOWERS TOILETS DAYROOM	<p><i>Pierce v. County of Orange</i>, 526 F.3d 1190 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that injunctive orders relating to the county jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, telephone access, and communication with jailhouse lawyers were not necessary to current and ongoing violations of pretrial detainees' constitutional rights. The court found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The county did not offer any legitimate rationale for maintaining inaccessible bathrooms, sinks, showers, and other fixtures in the housing areas and common spaces assigned to mobility and dexterity impaired detainees, and the county offered no explanation or justification for the significant differences between the vocational and recreational activities available to non-disabled and disabled detainees. Termination of injunctive orders requiring that inmates be provided with seating while detained in holding cells, or elsewhere, awaiting transport to or from court and requiring that inmates be given at least fifteen minutes within which to complete each meal did not constitute an abuse of discretion since the treatment of detainees in the county's holding cells and the time allowed for meals did not violate the detainees' constitutional rights. The court held that restrictions placed on use of the day room, limiting administrative segregation detainees' use of the room to one or two inmates at a time, were reasonably related to institutional security concerns. (Orange County Jail System, California)</p>
U.S. Appeals Court SANTATION TEMPERATURE VENTILATION	<p><i>Sain v. Wood</i>, 512 F.3d 886 (7th Cir. 2008). A civilly-committed sex offender brought a § 1983 action alleging that his conditions of confinement violated his Fourteenth Amendment due process rights. The district court granted summary judgment in favor of some defendants and denied a motion for summary judgment based on qualified immunity for the clinical director of a detention facility. The clinical director appealed. The appeals court reversed and remanded. The court held that the district court did not commit plain error in assuming implicitly that the clinical director was entitled to assert qualified immunity as a state actor. The court found that the offender's alleged conditions of confinement did not amount to inhumane treatment in violation of the Fourteenth Amendment. The conditions purportedly included unpleasant odors, lack of air conditioning, peeling paint and the presence of cockroaches which, according to the court, did not amount to inhumane treatment. The court noted that although the alleged conditions were unpleasant, they were not so objectively serious that they could establish a constitutional violation. (Joliet Treatment & Detention Facil., Illinois Dept. of Human Services)</p>
U.S. District Court ADA-Americans with Disabilities Act PLUMBING SAFETY	<p><i>Shaw v. TDCJ-CID</i>, 540 F.Supp.2d 834 (S.D.Tex. 2008). A legally blind state inmate brought an action alleging that prison officials failed to remedy unsafe conditions in handicapped showers, in violation of his constitutional rights, Title II of Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and the Texas Tort Claims Act (TTCA). The inmate also alleged that prison medical officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials. The court held that prison officials did not discriminate against the legally blind inmate as the result of their alleged failure to remedy unsafe conditions in the prison's handicapped showers, and thus the officials were not liable under Title II of Americans with Disabilities Act (ADA) for injuries the inmate sustained in a slip and fall accident. The court found that prison officials were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, as a result of their failure to remedy unsafe slippery conditions in the prison's handicapped showers, absent a showing that the officials were aware of and deliberately ignored an excessive risk. (Estelle Unit, Texas Department of Criminal Justice-Correctional Institutions Division)</p>
U.S. District Court FIRE SAFETY	<p><i>Shine v. Hofman</i>, 548 F.Supp.2d 112 (D.Vt. 2008). A federal pretrial detainee in the custody of the Vermont Department of Corrections brought a pro se action, alleging violation of his constitutional rights. The district court dismissed in part. The court found that allegations by the detainee that state officials failed to provide adequate fire sprinklers or access to fire extinguishers stated a claim for violation of the detainee's due process rights. The court held that the detainee's allegations that he was subjected to segregation, and that the conditions of segregation included a small cell with no windows and no opportunity to interact with other human beings, did not state a claim for violation of the due process clause. The court noted that prisons may impose restrictions on pretrial detainees so long as those restrictions are related to a non-punitive governmental purpose. (Vermont Department of Corrections)</p>
U.S. District Court LIGHTS SECURITY	<p><i>Walker v. Woodford</i>, 593 F.Supp.2d 1140 (S.D.Cal. 2008). A state prisoner filed a civil rights action against a prison and its personnel alleging that prison officials violated his Eighth Amendment rights by refusing to turn off the lights in their cells. The defendants filed a motion for summary judgment. The district court granted the motion. The court held that the prisoner had to present evidence showing that the prison's 24-hour illumination</p>

policy was the cause of his insomnia or related problems before the prison could be required to explain why legitimate penological interests justified it. According to the court, the prisoner's testimony did not establish that the illumination caused the unnecessary and wanton infliction of pain, or that prison personnel were deliberately indifferent to his serious medical needs in not modifying the illumination policy. The court found that prison officials were not plainly incompetent in requiring low-level lighting in prison cells 24 hours per day for security purposes. (Calipatria State Prison, California)

U.S. District Court
CELLS
EQUIPMENT
SANITATION

Wesolowski v. Kamas, 590 F.Supp.2d 431 (W.D.N.Y. 2008). A state prisoner brought a § 1983 action against correction officers and a superintendent, alleging that the defendants subjected him to cruel and unusual punishment and denied him equal protection of the law, in violation of his Eighth and Fourteenth Amendment rights. The district court granted the defendants' motion for summary judgment. The court held that the prisoner's rights under the Eighth and Fourteenth Amendments were not violated by a soiled mattress, the plexiglass shield over the front of his cell, another inmate's overflowed toilet, the use of a single slot to pass objects through a cell door, the denial of his preferred cleaning materials when other suitable materials were made available to him, or a single two-week period during which the plaintiff's cell was not cleaned. The court noted that the prisoner's complaints related principally to his personal preferences as to the cleanliness of his cell. Prison officials did not display deliberate indifference to the prisoner's complaints, but instead responded quickly and appropriately, in that the prisoner received a new mattress within two days of his request, and he was moved to a new cell without a plexiglass cover within five days of his complaint. (Southport Corr'l Facility, New York)

2009

U.S. District Court
CROWDING
CAPACITY

Coleman v. Schwarzenegger, 922 F.Supp.2d 882 (E.D.Cal. 2009). State prisoners brought class actions against a governor and other officials, alleging unconstitutional conditions of confinement as to the provision of medical and mental health care. After granting a correctional officer association's motion to intervene as a plaintiff, the motion to convene a three-judge panel was granted, to consider plaintiffs' request for order to reduce prison population. The court held that clear and convincing evidence established that overcrowding was the primary cause of the provision of inadequate medical and mental health care; (2) deficiencies in the provision of medical and mental health care could not be resolved in the absence of a prisoner release order; (3) reduction in the California state prison population to a system-wide cap was warranted; (4) the court's order was the least intrusive means necessary to correct the violations, as required by PLRA; and (5) reduction in the California state prison population to a system-wide cap of 137.5% was warranted. (California Department of Rehabilitation and Corrections)

U.S. District Court
TEMPERATURE

Dace v. Smith-Vasquez, 658 F.Supp.2d 865 (S.D.Ill. 2009). A state prisoner brought a § 1983 action against prison employees, alleging that his exposure to excessively cold conditions during his incarceration resulted in a deprivation of his Eighth Amendment rights, and that employees unconstitutionally retaliated against him by exposing him to such conditions. The employees moved for summary judgment and the district court granted the motion. The court held that the prisoner failed to administratively exhaust his § 1983 claims against prison employees in accordance with Illinois Department of Corrections grievance procedures, as required by the Prison Litigation Reform Act (PLRA). According to the court, even if the employees failed to directly respond to some or all of the prisoner's grievances, the fact remained that the prisoner failed to take up those unresolved grievances with a Grievance Officer as required by the grievance procedures. The court held that the prisoner failed to establish that alleged excessively cold temperature in his cell for a period of approximately three weeks was sufficiently serious to deprive him of the minimal civilized measures of life's necessities, as would support his Eighth Amendment prison conditions claim. Although the prisoner and other inmates in his cell block had to bundle up to try to stay warm, and the prisoner contracted a case of common cold, there was no concrete, objectively verifiable evidence that demonstrated the degree of cold in the cell during the relevant time period.

The court found that prison employees were not deliberately indifferent to the prisoner's complaints regarding cold temperature in his cell during a three-week period, as would support the prisoner's Eighth Amendment prison conditions claim. The court noted that the prisoner testified that he had winter clothing and a blanket and that he used them, employees made efforts to address the prisoner's complaints regarding the situation by submitting work orders for a heating system, and there was no evidence that the employees had authority to do anything else. The court found that the prisoner failed to establish that his prior lawsuit against prison officials and/or his filing of grievances was the "motivating factor" for the alleged actions of prison employees, including exposing the prisoner to extreme cold, not allowing him to go to the commissary, handcuffing him, damaging his property, and not responding to his grievances, as would support his § 1983 retaliation claim against the employees. (Menard Correctional Center, Illinois)

U.S. District Court
CAPACITY
CROWDING
DAYROOM
HYGIENE
LIGHTS
NOISE
SAFETY
TEMPERATURE

Graves v. Arpaio, 633 F.Supp.2d 834 (D.Ariz. 2009). Pretrial detainees in a county jail system brought a class action against a county sheriff and a county board of supervisors, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The amended judgment provided relief regarding the following: population/housing limitations, dayroom access, natural light and windows, artificial lighting, temperature, noise, access to reading materials, access to religious services, mail, telephone privileges, clothes and towels, sanitation, safety, hygiene, toilet facilities, access to law library, medical care, dental care, psychiatric care, intake areas, mechanical restraints, segregation, outdoor recreation, inmate classification, visitation, food, visual observation by detention officers, training and screening of staff members, facilities for the handicapped, disciplinary policy and procedures, inmate grievance policy and procedures, reports and record keeping, security override, and dispute resolution. The detainees moved for attorney's fees and nontaxable costs. The district court held that the class of detainees was the prevailing party entitled to attorney's fees. The court noted that defending and enforcing the judgment for more than five years and obtaining

prospective relief required substantial time and labor, the issues presented were not novel but many were difficult and complex, conducting discovery, marshaling evidence, and presenting that evidence during a 13-day evidentiary hearing required considerable skill, commitment of attorneys' time and advancement of costs limited attorneys' ability to take on new cases, and the attorneys would not receive any compensation for their work representing the detainees except as awarded by the court. (Maricopa County Sheriff and Maricopa County Board of Supervisors, Arizona)

U.S. District Court
FURNISHINGS
SANITATION
VENTILATION

Johnson v. Boyd, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. The court held that a substantial risk of harm to the prisoner's health or safety did not result from the prisoner's detention, where, among other things, a professional exterminator routinely sprayed the facility for rodents and bugs, exposed wires from ceiling light fixtures that had been pulled down by inmates were not hazardous or were not located in cells where the prisoner had been confined, the ventilation system was operational and only temporarily malfunctioned when inmates put paper and other materials in vents, fresh water was located in coolers in pods and was brought to the prisoner's cell several times per day, and the prisoner had been provided with a concrete sleeping slab and extra blankets. (Crittenden County Detention Center, Arkansas)

U.S. District Court
ADA- Americans with
Disabilities Act
HANDICAPPED
HYGIENE

Phipps v. Sheriff of Cook County, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paraplegic and partially-paralyzed pretrial detainees currently and formerly housed at a county prison brought a class action against the county and county sheriff, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The parties cross-moved for summary judgment. The district court denied the motions for summary judgment. The court held that the sheriff waived the affirmative defense that the plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the sheriff raised that defense for the first time in his motion for summary judgment. The court held that the pretrial detainees adequately alleged discrimination based on the prison's failure to provide wheelchair-accessible bathroom facilities. According to the court, the detainees met the PLRA physical injury requirement. In addition to alleging mental and emotional harm, the detainees complained of bed sores, infections, and injuries resulting from falling to the ground from their wheelchairs and toilets, which were undeniably physical injuries. The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were "services" and "programs" within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
MEDICAL AREAS
MEDICAL EXAM

Plata v. Schwarzenegger, 560 F.3d 976 (9th Cir. 2009). In a class action brought on behalf of state prisoners, alleging that state officials were providing inadequate health care in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA), the receiver appointed to oversee the provision of health care at state prisons moved for an order of contempt based on the state's failure to fund the receiver's capital projects. The district court ordered the state to fund the projects and to show cause why it should not be held in contempt. The state appealed, and alternatively filed a petition for a writ of mandamus. The appeals court dismissed the appeal and denied the writ of mandamus. According to the court, the state failed to prove that it would be damaged or prejudiced in a way not correctable on appeal, weighing against granting the state's petition for a writ of mandamus to prevent the district court from holding it in contempt based on its failure to fund the receiver's capital projects. (California Department of Corrections and Rehabilitation)

U.S. District Court
CELLS
LIGHTS
SECURITY

Rodriguez-Borton v. Pereira-Castillo, 593 F.Supp.2d 399 (D.Puerto Rico 2009). Relatives of a deceased pretrial detainee brought a § 1983 action against prison officials, requesting damages for constitutional violations culminating in the detainee's death. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by fact issues as to the lack of adequate inmate supervision and malfunctioning cell locks and cell lights. The court also found an issue of material fact as to whether the Administrator of the Puerto Rico Administration of Corrections (AOC) failed to act with regard to security risks, including malfunctioning door locks, in the annex within which the pretrial detainee was found hanged. The court also found a genuine issue of material fact as to the prison annex superintendent's failure to remedy supervision problems in housing units where he knew inmates were able to and did move freely in and out of their cells due to malfunctioning door locks. The court held that summary judgment was precluded by a genuine issue of material fact as to a correctional officer's failure to patrol the living area of the annex within which the pretrial detainee was found hanged while he knew inmates were able to freely move around. The court denied qualified immunity to the defendants because it was clearly established at the time of the alleged inaction, and a reasonable prison official working in the system would have known that a lack of supervision, combined with the knowledge that cell locks did not function, would create an obvious and undeniable security risk. (Administration of Corrections of the Commonwealth of Puerto Rico, and Annex 246)

U.S. District Court
ADA- Americans with
Disabilities Act
EQUIPMENT
HANDICAPPED
HYGIENE
VISITATION AREAS

Shariff v. Coombe, 655 F.Supp.2d 274 (S.D.N.Y. 2009). Disabled prisoners who depended on wheelchairs for mobility filed an action against a state and its employees asserting claims pursuant to Title II of the Americans with Disabilities Act (ADA), Title V of Rehabilitation Act, New York State Correction Law, and First, Eighth, and Fourteenth Amendments. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court noted that although the height of a counter was not lowered in response to the grievance, the prison had attempted to remedy the situation by changing the way in which hot food was served from the counter. According to the court, the inability of disabled prisoners who depended on wheelchairs for mobility to access restrooms throughout a state prison rose to the level of an objective violation

of the Eighth Amendment, where the prisoners soiled themselves up to several times per week. The court noted that the sheer frequency with which those incidents occurred, not to mention the physical injuries that at least some prisoners had suffered in attempting to use an inaccessible restroom, indicated that the prisoners had been denied a minimal civilized measure of life's necessities or there was an unreasonable risk of serious damage to their future health. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison and its employees were deliberately indifferent to the prisoners' restroom needs.

The court found that the height of a food service counter and the absence of accessible water fountains throughout the state prison were not conditions that deprived disabled prisoners, who depended on wheelchairs for mobility, of minimal civilized measure of life's necessities and they did not pose an unreasonable risk of serious damage to their future health, as required for a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. The court noted that although one prisoner suffered a burn on his hand caused by hot food or liquid falling from a food service counter, falling or spilled food did not create an unreasonable risk of serious damage to the prisoner's health. The court held that the existence of potholes and broken concrete in state prison yards did not constitute a violation of the Eighth Amendment's prohibition on cruel and unusual punishment as to disabled prisoners who depended on wheelchairs for mobility, even if those prisoners had fallen and suffered injuries as a result. According to the court, the inaccessibility of telephones throughout a state prison, inaccessibility of a family reunion site, inaccessibility of a law library, and malfunctioning of a school elevator, that did not cause any physical harm or pain to disabled prisoners who depended on wheelchairs for mobility, were not the kind of deprivations that denied a basic human need, and thus did not constitute a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. (New York State Department of Correctional Services, Green Haven Correctional Facility)

U.S. Appeals Court
ASBESTOS

Smith v. U.S., 561 F.3d 1090 (10th Cir. 2009). An inmate brought an action against prison employees, the U.S. Attorney General, and the director of the Federal Bureau of Prisons, alleging that he was exposed to asbestos while assigned to work at a prison. The district court granted the defendants' motion to dismiss, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the Inmate Accident Compensation Act was the exclusive remedy against the government for a prisoner with alleged work-related injuries, and thus dismissal of the prisoner's claims under Federal Tort Claims Act (FTCA) was warranted. The court held that the federal workers' compensation scheme for participants in a prison work program lacked the requisite procedural safeguards of the inmate's constitutional rights to foreclose a Bivens action by the inmate. According to the court, the inmate's allegations that prison employees had known that asbestos was present in a closet in which the inmate was working when he was exposed to asbestos were sufficient to state an Eighth Amendment Bivens claim against those employees. (United States Penitentiary at Leavenworth, Kansas)

2010

U.S. Appeals Court
ADA-Americans with
Disabilities Act

Armstrong v. Schwarzenegger, 622 F.3d 1058 (9th Cir. 2010). A class of disabled state prison inmates and parolees moved for an order requiring state prison officials to track and accommodate the needs of disabled parolees housed in county jails, and to provide access to a workable grievance procedure pursuant to the officials' obligations under the Americans with Disabilities Act (ADA), Rehabilitation Act, and prior court orders. The district court granted the motion and the state appealed. The appeals court affirmed in part and vacated in part. The appeals court held that: (1) contractual arrangements between the state and a county for incarceration of state prison inmates and parolees in county jails were subject to ADA; (2) the district court's order was not invalid for violating federalism principles; (3) the state failed to show that the order was not the narrowest, least intrusive relief possible, as required by the Prison Litigation Reform Act (PLRA); but (4) there was insufficient evidence to justify the system-wide injunctive relief in the district court's order. The court noted the state's recent proposal to alter its sentencing practices to place in county jails approximately 14,000 persons who would otherwise be incarcerated in state prisons. The court also noted that the state's contracts with counties were not simply for incarceration, but to provide inmates and parolees in county jails with various positive opportunities, from educational and treatment programs, to opportunities to contest their incarceration, to the fundamentals of life, such as sustenance, and elementary mobility and communication, and the restrictions imposed by incarceration meant that the state was required to provide these opportunities to individuals incarcerated in county jails pursuant to state contracts to the same extent that they were provided to all state inmates. The district court's order did not require the state to shift parolees to state facilities if county jails exhibited patterns of ADA non-compliance; rather, the order required that, if the state became aware of a class member housed in a county jail who was not being accommodated, the state either ensure that the jail accommodated the class member, or move the class member to a state or county facility which could accommodate his needs. In finding that statewide injunctive relief was not needed, the court held that evidence of ADA violations was composed largely of single incidents that could be isolated, and the district court's order identified no past determinations that showed class members in county jails were not being accommodated. (California Department of Corrections and Rehabilitation)

U.S. District Court
TEMPERATURE
VENTILATION

Blackmon v. Kukua, 758 F.Supp.2d 398 (S.D.Tex. 2010). A state prisoner brought a civil rights action against prison officials, alleging his exposure to excessive heat violated his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether conditions during the state prisoner's incarceration in a prison unit, which included frequent temperatures into the 100's and insufficient ventilation, and which allegedly had a negative effect on the prisoner's personal health, constituted a denial of the minimal civilized measure of life's necessities. The court held that a prison maintenance supervisor did not act with deliberate indifference to the state prisoner's health or safety in responding to the prisoner's grievance about excessive heat, as required to support an Eighth Amendment claim, where he investigated the prisoner's complaint and gave an appropriate response. According to the court, the state prisoner's right not to be subjected to excessive heat was clearly established at the time he was continually exposed to temperatures into the 90s and 100s, in determining whether prison officials who failed to respond to his complaints about the heat

were entitled to qualified immunity in his civil rights action. (Garza East Unit, Beeville, Texas Department of Criminal Justice)

U.S. Appeals Court
EQUIPMENT
FIRE SAFETY

Davis v. Oregon County, Missouri, 607 F.3d 543 (8th Cir. 2010). A pretrial detainee brought an action under § 1983 and various state law authority against a county, county sheriff's department, and a sheriff, alleging the defendants violated his rights in failing to ensure his safety after a fire broke out at the county jail. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed. The court held that the county jail's smoking policy did not demonstrate that the sheriff acted with deliberate indifference in violation of the due process rights of the detainee caught in his cell during a jail fire, even if a jailer supplied cigarettes to inmates, since the jail had an anti-smoking policy in effect at all relevant times. The court noted that the jailer who allegedly supplied the cigarettes to the inmates had retired nine months before the fire occurred, and jail officials made sweeps for contraband as recently as five days before the fire. According to the court, the county jail's inoperable sprinklers and lack of extra fire safety equipment such as oxygen tanks did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, where jail officials took action to deal with fire hazards by prohibiting smoking and searching for contraband, and fire extinguishers and smoke detectors were present at the time of the fire. The court held that any failure of the sheriff to engage his officers in more exhaustive emergency training did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, even if the officers' lack of training presented a substantial safety risk. The court noted that the officers' actions in removing inmates from their cells after they discovered the fire demonstrated that they did not disregard the risk. (Oregon County Jail, Missouri)

U.S. Appeals Court
MEDICAL AREAS
SANITATION

Duvall v. Dallas County, Tex., 631 F.3d 203 (5th Cir. 2010). A pretrial detainee brought a § 1983 action against a county for personal injuries stemming from a staph infection that he contracted while incarcerated in the county's jail. At the conclusion of a jury trial in the district court the detainee prevailed. The county appealed. The appeals court affirmed. The court held that: (1) sufficient evidence supported the finding that the county's actions in allowing the infection were more than de minimis; (2) sufficient evidence existed to support the finding that the county had an unconstitutional custom or policy in allowing the infection to be present; and (3) sufficient evidence supported the finding that the detainee contracted the infection while in jail. The court noted that physicians testified that there was a "bizarrely high incidence" of the infection and that they were not aware of a jail with a higher percentage of the infection than the county's jail. According to the court, there was evidence that jail officials had long known of the extensive infection problem yet continued to house inmates in the face of the inadequately controlled staph contamination, and that the county was not willing to take the necessary steps to spend the money to take appropriate actions. The court noted that there was evidence that the jail had refused to install necessary hand washing and disinfecting stations and had failed to use alcohol-based sanitizers, which were the recommended means of hand disinfection. (Dallas County, Texas)

U.S. Appeals Court
TEMPERATURE

Graves v. Arpaio, 623 F.3d 1043 (9th Cir. 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court
DOUBLE CELLING
GENERAL
CONDITIONS
PLUMBING
SANITATION
VENTILATION

Mitchell v. Dodrill, 696 F.Supp.2d 454 (M.D.Pa. 2010). A federal prisoner initiated a Bivens-type action against the Bureau of Prisons (BOP) employees, making several complaints about various conditions of his former place of confinement. The district court granted summary judgment for the defendants in part, and denied in part. The court held that, absent any evidence that the alleged conditions of the prisoner's cell caused harm to the prisoner, and that the Bureau of Prisons (BOP) defendants were deliberately indifferent to that harm, cell conditions did not violate the Eighth Amendment. The prisoner alleged that his cell was in poor condition, with poor welding and rust erosion present at the base of the walls, had inadequate plumbing, was infested with "cockroaches, spiders, worms, mice and other unknown insects," and lacked ventilation. The court found that the prisoner's allegation, that as a special management unit inmate, he was not given the same commissary privileges as a general population inmate, did not rise to the level of a sufficiently serious constitutional deprivation to give rise to an Eighth Amendment claim. The court held that double ceiling of the prisoner did not violate the Eighth Amendment where the prisoner did not allege that he was singled out for double-ceiling or that his health or life was endangered by the condition. The court noted that double ceiling inmates is not per se unconstitutional, and that considerations that are relevant in determining if double ceiling violates the Eighth Amendment include the length of confinement, the amount of time prisoners spend in their cells each day, sanitation, lighting, bedding, ventilation, noise, education and rehabilitation programs, opportunities for activities outside the cells, and the repair and functioning of basic physical facilities such as plumbing, ventilation, and showers. (Special Management Unit, United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
SAFETY

Quarles v. Palakovich, 736 F.Supp.2d 941 (M.D.Pa. 2010). An inmate, whose head and back had allegedly been injured when a portion of drywall ceiling in a prison shower collapsed onto him, filed a pro se § 1983 action against prison officials alleging deliberate indifference to his safety, in violation of the Eighth Amendment. All

parties moved for summary judgment. The district court granted the defendants' motion in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison's unit manager or correctional officers had subjective knowledge of the dangerous condition of the ceiling in the inmates' shower facilities. (State Correctional Institution at Smithfield, Pennsylvania)

U.S. District Court
EQUIPMENT

Sexton v. Kenton County Detention Center, 702 F.Supp.2d 784 (E.D.Ky. 2010). Two female detainees brought a § 1983 action against a county detention center and officials, alleging deliberate indifference with respect to hiring and supervision of a deputy who sexually assaulted them while they awaited arraignment. The defendants moved for summary judgment. The district court granted the motion. The court held that the detainees failed to establish deliberate indifference with respect to the center's hiring of the deputy. The court noted that none of the deputy's prior misdemeanor offenses, including his driving infractions and domestic assault, demonstrated a propensity to commit rape. The court found that the detainees failed to demonstrate a causal link between the center's alleged policy of not terminating employees with excessive absenteeism and the deputy's conduct. The court noted that "...Absent evidence of prior complaints of sexual assault, the mere fact that a male guard supervises a female inmate does not lead to the conclusion that the inmate is at a great risk of being sexually assaulted by the guard." According to the court, the detainees failed to establish that the county detention center was deliberately indifferent to their constitutional rights by not effectively monitoring surveillance equipment, and thus they could not recover in their § 1983 action against the center, where there was no evidence that the center had a policy or custom of ineffective surveillance. The detainees argued that only one person monitored the 89 cameras that were used throughout the Detention Center and that they were mainly monitored only for ingress and egress of secured doors. They asserted that the county should have had cameras in the video arraignment room for the inmates' protection. The court noted that state jail regulations do not require constant monitoring of video surveillance cameras or dictate where the cameras are to be placed inside a detention facility. (Kenton County Detention Center, Kentucky)

U.S. District Court
LIGHTS

Silverstein v. Federal Bureau Of Prisons, 704 F.Supp.2d 1077 (D.Colo. 2010). A federal inmate brought a civil rights action against the Bureau of Prisons and correctional officers, challenging conditions of his confinement. The district court denied the defendants' motion to dismiss in part. The court held that the allegation that the inmate was indefinitely placed in solitary confinement, isolated from other inmates and correctional facility staff, and subjected to continuous lighting and camera surveillance, was sufficient to allege a liberty interest in conditions of his confinement. The court found that the allegation that the inmate was subjected to solitary confinement for more than two decades was sufficient to state claim under the Eighth Amendment against the Bureau. But, according to the court, the inmate did not have a liberty interest in avoiding transfer to administrative segregation facility. (United States Penitentiary, Administrative Maximum facility, Florence, Colorado)

U.S. District Court
KITCHEN
SANITATION

Smith-Bey v. CCA/CTF, 703 F.Supp.2d 1 (D.D.C. 2010). A District of Columbia inmate brought a § 1983 action against a prison, the private corporation that ran the prison, and a food services company, alleging the prison's kitchen was so poorly maintained and infested with vermin that being forced to eat food prepared there amounted to cruel and unusual punishment in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion. The court held that the two instances in which the inmate discovered cockroaches in his food, "while certainly unpleasant," did establish an Eighth Amendment violation. (Correctional Treatment Facility, Washington, D.C.)

U.S. Appeals Court
LIGHTS

Torres v. O'Quinn, 612 F.3d 237 (4th Cir. 2010). An inmate brought an action against state prison officials, complaining that the officials failed to repair a malfunctioning night-light in his prison cell, resulting in a disturbing strobe effect. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. The inmate appealed and the appeals court affirmed. The inmate then brought a separate action against prison officials, alleging a constitutional violation due to the prison's prohibition of his subscription to commercially available pictures of nude women. The district court dismissed the action for failure to state a claim upon which relief could be granted, the inmate appealed, and the appeals court dismissed the appeal. The inmate then moved for a partial refund of filing fees that had been collected from his prison trust account, challenging the prison's practice of withholding 40 percent of his account to satisfy the filing fee requirement for his two appeals. The appeals court found that PLRA required that no more than 20 percent of an inmate's monthly income be deducted to pay filing fees, irrespective of the total number of cases or appeals the inmate had pending at any one time. The court held that granting the inmate a partial refund of fees was not warranted since the amounts withheld from the inmate's account were actually owed and were properly, if excessively, collected. (Red Onion State Prison, Virginia)

U.S. Appeals Court
LIGHTS
SAFETY

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a "shake down" of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate's allegation that the prison's maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

2011

U.S. District Court
CROWDING
CELL SIZE

Bailey v. Hughes, 815 F.Supp.2d 1246 (M.D.Ala. 2011). A state prisoner brought an action against a county sheriff's department, a sheriff, corrections officers, and others, alleging unconstitutional deprivations of his rights while in custody in a county jail. The defendants moved to dismiss and for an award of attorney fees. The district court granted the motions. The district court held that: (1) neither the Fourteenth Amendment nor the Fourth Amendment's excessive force prohibition applied to the sentenced offender; (2) the sheriff and supervisory officials were entitled to qualified immunity; (3) allegations did not state an Eighth Amendment claim based on jail overcrowding; (4) the officers' alleged conduct in tasing the prisoner did not violate the Eighth Amendment; (5) allegations did not state a § 1983 claim for an unconstitutional strip search; (6) placement of the prisoner alone in closet-sized cell for eight hours after the alleged incident did not amount to unconstitutional confinement; and (7) the officers' alleged conduct in searching the prisoner's cell did not amount to retaliation for prisoner's prior lawsuit. The court noted that the prisoner admitted that he repeatedly refused the officers' verbal commands and fled his cell, he was repeatedly warned that he would be shocked if he did not comply with the officers' commands, and he was shocked by a taser only once before he fled his cell and then two to three times after he did so. (Houston County Jail, Alabama)

U.S. District Court
DOUBLE CELLING
CELL CAPACITY
CROWDING

Bradley v. Mason, 833 F.Supp.2d 763 (N.D.Ohio 2011). State inmates filed a § 1983 action asserting multiple causes of action pertaining to their convictions and conditions of confinement. The district court dismissed the case, finding that class certification was not warranted, where the inmates made no attempt to define the class, many claims were specific to named plaintiffs, and the plaintiffs were proceeding pro se. The court found that overcrowded conditions at the county jail, which required two inmates to share a cell designed for one and required inmates to eat meals in their cells, did not amount to cruel and unusual punishment, in violation of the pretrial detainee's due process rights and an inmate's Eighth Amendment rights, absent a showing that conditions of confinement deprived them of the minimal civilized measure of life's necessities, or subjected them to a health risk. The inmates claimed that one inmate was required to sleep on a mattress on the floor cell, which allegedly adds clutter to the floor and increases the risk of injury. The inmates alleged that the jail has more inmates than the day rooms can accommodate at meal time, and inmates are therefore required to eat meals in their cells. (Cuyahoga County Jail, Ohio)

U.S. District Court
CELLS
MAINTENANCE

Byron v. Dart, 825 F.Supp.2d 958 (N.D.Ill. 2011). A pretrial detainee who was stabbed in the head by an unknown inmate who opened the detainee's cell door from outside without a key brought a § 1983 action against the county sheriff, jail administrators, and a corrections officer, alleging that the defendants failed to protect him in violation of the Fourteenth Amendment. The officials moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the detainee's allegations in his complaint stated a "sufficiently serious injury" as required for a Fourteenth Amendment failure to protect claim against the prison administrators. The court also found that the detainee's allegations in his complaint were sufficient to state a "deliberate indifference" element of the detainee's Fourteenth Amendment failure to protect claim against prison administrators. The detainee alleged that the problem of malfunctioning cell doors was "pervasive," "well-documented," and "expressly noted by prison officials in the past," that work orders to repair cell doors were never executed, and that he complained about his door, but it was never repaired. According to the court, the detainee became aware, from his own observations and in speaking with other detainees, that numerous cells were "in a state of disrepair and/or had malfunctioned," and that specifically, the doors of the cells could be "popped" open by detainees from the outside without a key. (Cook County Jail, Illinois)

U.S. Appeals Court
EQUIPMENT
FURNISHING
SAFETY

Fields v. Abbott, 652 F.3d 886 (8th Cir. 2011). A female jailer brought a § 1983 action against a county, sheriff, county commissioners, and several other defendants, alleging violations of her substantive due process rights. The district court denied the sheriff's and commissioners' motion for summary judgment on the basis of qualified immunity and the defendants appealed. The appeals court reversed and remanded, finding that the defendants' failure to act was not deliberate indifference as to the safety of the jailer. According to the court, the sheriff's and county commissioners' awareness of potentially dangerous conditions in the jail, including that the jail was understaffed and that the drunk tank had an interior-mounted door handle, and failure to take action regarding those conditions, which resulted in the jailer being attacked and taken hostage by two inmates, was not deliberate indifference as to the safety of the jailer, as would violate the jailer's Fourteenth Amendment substantive due process rights on a state created danger theory. The court found that the defendants' failure to act was at most gross negligence, rather than deliberate indifference, and the jailer was aware of the conditions as she had been injured previously due to the handle and staffing issue, such that she could take these issues into account in interacting with inmates. (Miller County Jail, Missouri)

U.S. District Court
ADA-Americans with
Disabilities Act
FACILITY DESIGN

Pierce v. County of Orange, 761 F.Supp.2d 915 (C.D.Cal. 2011). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, the court held that: (1) a sub-class was properly defined as mobility-impaired and dexterity-impaired pretrial detainees; (2) the detainees were subject to physical barriers to accessibility of jail facilities, in violation of ADA; (3) certain categories of programs, services, and activities were not similarly available to the detainees, in violation of ADA; (4) the county failed to establish that accommodations requested by the detainees would require fundamental alteration or produce an undue burden, or that current conditions were reasonably related to the facilities' legitimate interests; and (5) the least intrusive means to compel the county to remedy physical barriers and disparate provision of programs, services, and activities to detainees was to allow the county to draft a proposed plan. The court held that the widespread injunctive relief ordered by the district court, which addressed the county's failure to accommodate detainees

with respect to toilets and showers, as well as programs, activities, and services, was narrowly drawn, extended no further than necessary to correct violations of the detainees' federal rights, and was the least intrusive means necessary to correct violation of those federal rights, as required by the Prison Litigation Reform Act (PLRA). (Orange County Jail System, California, including the Central Jail Complex, the Intake Release Center, the Men's Central Jail, the Women's Central Jail and the James A. Facility Musick and the Theo Lacy Facility)

U.S. District Court
FURNISHINGS
SANITATION

Rodriguez-Sanchez v. Acevedo-Vila, 763 F.Supp.2d 294 (D.Puerto Rico 2011). An inmate brought a § 1983 action against a prison warden and a director of corrections for alleged violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court held that the prison warden was liable for an Eighth Amendment violation but the inmate was not entitled to a judgment against the director of corrections. The court found that the inmate was entitled to \$1,000 per day for pain and suffering and to a punitive damages award of \$10,000 from the warden. According to the court, the warden was liable to the inmate for violating the inmate's Eighth Amendment right to be free from cruel and unusual punishment because the inhumane conditions to which the inmate was subjected in his cell included the lack of an adequate place to sit, no working toilet, shower runoff water channeled through the cell, and foul odors. The court held that these conditions were the result of design and not of accident or happenstance, and were known to the prison officials in charge and in control, including the warden. (Correctional Institution Annex 296, Guayama, Puerto Rico)

U.S. District Court
SANITATION

Solomon v. Nassau County, 759 F.Supp.2d 251 (E.D.N.Y. 2011). A pretrial detainee brought an action against a county, jail, sheriff, and undersheriff, alleging that his civil rights were violated when he was bitten by a rodent in his jail cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that because the sheriff and undersheriff were not "personally involved" in any alleged failure to maintain a safe prison environment, they were not subject to § 1983 liability for the injury to the pretrial detainee who was bitten by a rodent in his jail cell. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pretrial detainee was exposed to a substantial risk of contracting rabies or another dangerous disease from a rodent bite, and whether the county was aware of the substantial risk of serious harm. According to the court, although protection of inmates from harmful chemicals and the need to prevent inmates from using poisons, glue traps, or door sweeps as weapons were legitimate penological interests that supported the reasonableness of the jail's pest control plan, a genuine issue of fact existed as to whether the county was adequately complying with the plan, and whether the lack of compliance could have resulted in the alleged substantial risk of harm. (Nassau County Correctional Center, New York)

U.S. District Court
CONSENT DECREE
CROWDING
MEDICAL EXAM
SANITATION
USE OF FORCE

U.S. v. Cook County, Illinois, 761 F.Supp.2d 794 (N.D.Ill. 2011). The U.S. Department of Justice (DOJ) brought an action against a county, alleging conditions in a county jail violated the Eighth and Fourteenth Amendment. Following entry of a consent decree, the county moved for entry of a prisoner release order. The district court denied the motion. The court held that while overcrowding was a primary cause of the unconstitutional conditions at the jail and a prisoner release order was the least intrusive form of relief for overcrowding in the jail, the proposed prisoner release order was not narrowly drawn or sufficiently specific, and thus the grant of the order was not warranted. The court noted that conditions of overcrowding caused guards to resort to excessive force, incidents involving guards' use of excessive force were more frequent on days the jail was overcrowded, overcrowding caused grossly unsanitary and unhealthy conditions, and chronic overcrowding of the jail's medical facilities resulted in inadequate medical and mental-health care. According to the court, the proposed order did not explain or justify the number of inmates who would be affected by the order or the number of inmates that would be released annually, did not specify which class or classes of prisoners would be eligible for release or what grounds were to be used in deciding whether an inmate should be released on their own recognizance or released on electronic monitoring, or provide assurance that adequate funding would be available for electronic monitoring equipment or that prisoners released to electronic monitoring would be effectively monitored. (Cook County Jail, Illinois)

2012

U.S. District Court
KITCHEN
SAFETY

Allen v. Ford, 880 F.Supp.2d 407 (W.D.N.Y. 2012). A state inmate brought a § 1983 action against correction officers, alleging negligence in failing to provide adequate safety equipment while he was working in a cafeteria and in failing to provide treatment when he burned himself, as well as asserting deliberate indifference in instruction and supervision. The officers moved for summary judgment. The district court granted the motion. The court held that: (1) the negligence claims were precluded by sovereign immunity; (2) one officer did not know of and disregard the severity of the prisoner's injuries; and (3) the officer advising the prisoner to sign up for sick call for the following morning, rather than providing emergency sick call at that time, was not deliberately indifferent. The court noted that the prisoner reported the incident to the officer, who asked if he was badly burned, the prisoner responded that he did not know, the prisoner's skin did not blister until after he returned to his cell at the end of his shift, and the prisoner visited the medical department the next morning and was transferred to a county medical center. (New York State Department of Corrections, Wende Correctional Facility)

U.S. District Court
ADA- Americans with
Disabilities Act
COURT ORDER

Armstrong v. Brown, 857 F.Supp.2d 919 (N.D.Cal. 2012). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, plaintiffs moved for an order requiring officials to track and accommodate the needs of class members housed in county jails and to provide a workable grievance procedure. Following remand to allow the development of additional evidence, the prisoners and parolees filed a renewed motion. The district court granted the motion and entered an enforce order. The court held that: (1) officials' efforts to comply with ADA, the Rehabilitation Act, and prior orders were inadequate and ineffective on a system-wide level; (2) system-wide injunctive relief was appropriate; (3) district court would not abstain from exercising its jurisdiction over matters pertaining to county jails; (4) a stay of the prior order was not warranted;

and (5) the district court would exercise its retained jurisdiction to enforce the injunction. The court held that state officials were obliged to ensure ADA-compliant conditions for prisoners and parolees that they housed under their own authority in county jails. (California Youth and Adult Corrections Authority, Board of Prison Terms, California Department of Corrections)

U.S. Appeals Court
DINING
HANDICAPPED
ADA- Americans with
Disabilities Act

Jaros v. Illinois Dept. of Corrections, 684 F.3d 667 (7th Cir. 2012). A former inmate sued the Illinois Department of Corrections, its Director, and several employees claiming violations of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Eighth Amendment. The district court dismissed the complaint for failure to state a claim, and the former inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the inmate's allegations that his use of the toilets and showers at the prison was made more difficult by the absence of grab bars did not state an Eighth Amendment claim, where the inmate was able to shower four times a month. He also missed meals on occasion because he could not walk fast enough to the cafeteria. The court found that the prisoner pleaded a plausible claim for failure to make reasonable accommodations under the Rehabilitation Act where he alleged that the Department of Corrections refused to accommodate his disability, and consequently kept him from accessing meals and showers on the same basis as other inmates. (Vandalia Correctional Center, Illinois)

U.S. District Court
RELIGIOUS AREAS
SANITATION

Knows His Gun v. Montana, 866 F.Supp.2d 1235 (D.Mont. 2012). Native American state prisoners brought an action against a state, the state department of corrections (DOC), a private prison facility, and wardens, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). Defendants filed motion to dismiss. The district court held that: (1) the allegations were sufficient to plead the searches were a substantial burden on their religious exercise; (2) the allegations were sufficient to plead the confiscations and prohibitions were a substantial burden on their religious exercise; (3) the allegations about relieving a prisoner from the pipe carrier position were sufficient to plead it was a substantial burden on his religious exercise; (4) transferred prisoners did not have standing for claims for injunctive and declaratory relief; (5) the private facility was a state actor; and (6) the private facility was an instrumentality of the state. The Native American prisoners' alleged that the prison subjected them to en masse strip searches before and after sweat lodge ceremonies, that the searches sometimes occurred in a hallway where other inmates could see them and at least one occurred in a gym with video cameras monitored by a female guard, and that some inmates declined to participate in the ceremony due to the degrading nature of the searches. According to the court, the prisoners' allegations that sacred items were confiscated or prohibited by the prison for their sweat lodge ceremonies, including smudge tobacco and antlers, and that the items were essential for the ceremony to be meaningful and proper were sufficient to plead confiscations and prohibitions were a substantial burden on their religious exercise, as required for their claims under RLUIPA. The prisoner also alleged that they were subject to pat down searches before and after entering the ceremonial sweat lodge grounds, that they were provided insufficient water and toilet facilities, that the size of the sweat lodge and the frequency of the ceremonies was inadequate, and that they were not provided a Native American spiritual advisor. (Montana Department of Corrections; Corrections Corporation of America; Crossroads Correctional Center)

U.S. Appeals Court
BEDS
FURNISHINGS
SUICIDE

Miller v. Harbaugh, 698 F.3d 956 (7th Cir. 2012). The mother of a minor who hanged himself while incarcerated at a state youth detention facility, on her own behalf and as the minor's representative, brought a § 1983 action against state officials, alleging deliberate indifference to the minor's serious mental illness. The 16-year-old youth had a history of mental illness and was known to have attempted suicide at least three times. The district court granted summary judgment for the officials. The mother appealed. The appeals court affirmed. The appeals court held that, even assuming that state supervisory officials' decision to use metal bunk beds in rooms of a youth detention facility that were occupied by residents who were mentally disturbed but did not appear to be imminently suicidal, amounted to deliberate indifference to the residents' serious medical needs, the law was not then so clearly established as to defeat the officials' defense of qualified immunity to the due process claim. The court found that a psychologist at the state youth detention facility, who had authorized the minor's transfer after learning of minor's unsuccessful participation in the facility's drug abuse program, was not deliberately indifferent to the minor's serious medical needs, in violation of due process. According to the court, even if he knew that the minor, who had mental health issues, presented a suicide risk and that the transferee facility was using metal bunk beds like that which the minor thereafter used to hang himself. The court found that the psychologist's involvement with the minor was minimal, the decision to make the transfer was made after the psychologist met with the facility's entire treatment staff, and the psychologist did not know which room at the transferee facility the minor would be given or that the facility's other suicide prevention measures would prove to be inadequate. (Illinois Youth Center, IYC Kewanee, Illinois)

U.S. District Court
EQUIPMENT
LIGHTS
SAFETY

Solivan v. Dart, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. District Court
SAFETY
SECURITY

Wilkins v. District of Columbia, 879 F.Supp.2d 35 (D.D.C. 2012). A pretrial detainee in a District of Columbia jail who was stabbed by another inmate brought an action against the District. The district court entered judgment as a matter of law in favor of the District and the detainee moved for reconsideration. The district court granted the motion and ordered a new trial. The court held that the issue of whether the failure of District of Columbia jail personnel to follow national standards of care for inmate access to storage closets and monitoring of inmate movements was the proximate cause of the detainee's stabbing by a fellow inmate was for the jury, in the detainee's negligence action, under District of Columbia law. Another inmate who was being held at the D.C. Jail on charges of first-degree murder attacked the detainee. The inmate had received a pass to go to the jail's law library, unaccompanied. Apparently he did not arrive at the library but no one from the library called the inmate's housing unit to report that he had not arrived. An expert retained by the detainee asserted that failure to monitor inmate movements violated national standards for the operation of jails. En route to the jail mental health unit, the detainee saw the inmate enter a mop closet. The inmate, along with another inmate, approached the detainee and stabbed him nine times with a knife. During court proceedings there was testimony that the inmates had hidden contraband in the mop closets. The closets are supposed to be locked at all times, other than when the jail is being cleaned each afternoon. But there was evidence from which the jury could infer that all inmates except those who did not have jobs cleaning in the jail had access to them. According to the detainee's expert witness, keeping mop closets locked at times when the general inmate population is permitted to be in the vicinity of the closets is in accordance with national standards of care for the operation of detention facilities. According to the district court, "In sum, the circumstantial evidence of Mr. Foreman's [inmate who attacked the detainee] freedom of movement is enough to have allowed a jury to conclude that the District's negligence was a proximate cause of Mr. Wilkins's injury..." (District of Columbia Central Detention Facility)

U.S. District Court
ADA- Americans with
Disabilities Act
BEDS
EQUAL
PROTECTION

Wilkins-Jones v. County of Alameda, 859 F.Supp.2d 1039 (N.D.Cal. 2012). A detainee at a county jail who had limited mobility and deformed hands as a result of systemic lupus and rheumatoid arthritis brought an action against the contractor that provided medical care assessment services for detainees, and its employees, alleging violations of Title II of the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), and the California Unruh Civil Rights Act. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the private contractor was not liable as a public entity or instrumentality under the ADA; (2) the contractor qualified as a "business establishment," under the California Unruh Civil Rights Act; (3) the complaint properly asserted a deprivation of full and equal accommodations, as required to state a claim under the California Unruh Civil Rights Act; (4) the allegations were insufficient to assert intentional discrimination, as required to state a claim against the contractor for violation of the California Unruh Civil Rights Act; (5) the CDPA applied to county jails and the accommodations and services provided therein; and (6) the allegations stated a claim against contractor under the CDPA. The jail inmate who had limited mobility and deformed hands alleged that she was unable to use the toilet in the jail as needed, causing her injuries, and that she was deprived of access to jail's facilities, beds, showers, walkways, and benches. According to the court, this properly asserted a deprivation of full and equal accommodations, as required to state a claim against the private contractor that contracted with county to provide medical care assessment services for the county jail. (County of Alameda, California)

2013

U.S. District Court
BEDS
SAFETY

Alvarado-David v. U.S., 972 F.Supp.2d 210 (D.Puerto Rico 2013). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging he fell out of his bunk and hit a toilet bowl, breaking his frontal teeth and upper lip because the United States' failed to provide prisoners with ladders to climb to their bunks. The United States moved to dismiss for lack of subject-matter jurisdiction under the FTCA's discretionary function exception. The district court granted the motion. The court held that the decision by Bureau of Prisons (BOP) personnel not to provide ladders or other equipment for the prisoners to climb to their bunks fit within the discretionary function exception to the FTCA. The court noted that no rules or regulations governed the use of ladders or bunk beds in correctional facilities, and the decision not to provide ladders in correctional facilities for safety reasons, as ladders could be broken off and used as weapons or escape devices, was grounded in considerations of public policy. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. District Court
LIGHTS
MAINTENANCE
SANITATION
VENTILATION

Ames v. Randle, 933 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought § 1983 Eighth Amendment claims against various employees of the Illinois Department of Corrections (IDOC) who allegedly were responsible for the conditions of the inmate's confinement. The defendants filed a motion to dismiss. The court denied the motion, finding that the inmate adequately pled that Illinois prison officials were deliberately indifferent, as required to state a § 1983 Eighth Amendment claim. According to the court, the inmate alleged that he repeatedly advised the official about the prison's detrimental living conditions and that the official did not make an effort to remedy the conditions, that he informed another official about the intolerable living conditions and that this official did not make an effort to remedy the conditions, and that he discussed the intolerable living conditions with other officials, each of whom also failed to make any efforts to remedy the living conditions. The inmate claimed that he was subjected to unsanitary conditions, a lack of ventilation, and continuous lighting that interfered with his sleep. He also alleged that his housing area had dried bodily fluids on the wall of his cell and a strong odor of ammonia from his uncleaned toilet, that there was pest infestation accompanied by filth and feces, and that there was a complete lack of basic cleaning supplies or even garbage bags. He also cited filthy soiled bedding, missing or dilapidated, and sometimes dangerously damaged cell furniture and fixtures, and badly peeling toxic paint. The inmate suffered from endocarditis, an infection of the lining of the heart, which he claimed was due to the conditions of his confinement, and from which his "numerous, almost constant, fungal infections" stemmed. (Stateville Correctional Center, Illinois Department of Corrections)

<p>U.S. Appeals Court ADA- Americans with Disabilities Act EQUAL PROTECTION</p>	<p><i>Armstrong v. Brown</i>, 732 F.3d 955 (9th Cir. 2013). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, the plaintiffs moved for an order requiring officials to track and accommodate the needs of the class members housed in county jails and to provide a workable grievance procedure. The prisoners and parolees filed a renewed motion, which the district court granted. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that: (1) Amendments to the California Penal Code relating to the legal custody of parolees did not relieve officials of responsibility for the discrimination suffered by disabled parolees housed in county jails, past and present, or of their obligation to assist in preventing further Americans with Disabilities Act (ADA) violations; and (2) orders requiring officials to track and accommodate the needs of disabled prisoners and parolees housed in county jails and to provide a workable grievance procedure were consistent with the Americans with Disabilities Act (ADA) and the Rehabilitation Act and did not infringe on California's prerogative to structure its internal affairs. (California Department of Corrections and Rehabilitation)</p>
<p>U.S. District Court COURT ORDER HANDICAPPED</p>	<p><i>Armstrong v. Brown</i>, 939 F.Supp.2d 1012 (N.D.Cal. 2013). Prisoners brought a class action against the Governor of California, the state Department of Corrections and Rehabilitation and a number of related directors and executive officers, seeking to enforce prior orders requiring the defendants to provide sign language interpreters (SLI), and to hold the defendants in contempt for violations. The district court granted the motion to enforce the prior orders. The court held that setting a policy which failed to provide SLIs for hearing-impaired inmates during rounds by psychiatric technicians warranted enforcement of the order against the defendants, and the defendants' failure to provide SLIs for hearing-impaired inmates at classes attended by deaf inmates also warranted an enforcement order. But the court decided that civil contempt sanctions were not appropriate because officials were making substantial efforts to reach compliance with the orders by voluntarily increasing both contract and civil services positions for qualified SLIs. (Substance Abuse Treatment Facility, California Department of Rehabilitation and Corrections)</p>
<p>U.S. Appeals Court PRIVACY</p>	<p><i>Arnzen v. Palmer</i>, 713 F.3d 369 (8th Cir 2013). Patients at a state Civil Commitment Unit for Sex Offenders (CCUSO) brought a § 1983 complaint against CCUSO administrators, challenging placement of video cameras in CCUSO restrooms, and moved for a preliminary injunction to stop their use. The district court denied the motion as to cameras in "dormitory style restrooms" but granted an injunction ordering that cameras in "traditional style bathrooms" be pointed at a ceiling or covered with lens cap. The appeals court affirmed. The appeals court held that CCUSO conducted a "search" by capturing images of patients while occupying single-user bathrooms, and that CCUSO did not conduct a reasonable search by capturing patients' images, thereby constituting a Fourth Amendment violation. The appeals court found that the district court did not abuse its discretion in issuing preliminary injunctive relief. The court noted that the patients had a reasonable expectation of privacy in a single-person bathroom when there was no immediate indication it was being used for purposes other than those ordinarily associated with bathroom facilities, and that involuntarily civilly committed persons retain the Fourth Amendment right to be free from unreasonable searches that is analogous to the right retained by pretrial detainees. According to the court, the facility did not conduct a reasonable search of its involuntarily committed patients by capturing images of patients while they occupied single-user bathrooms in a secure facility, thereby constituting a violation of Fourth Amendment, where the cameras did not provide administrators with immediate alerts concerning patient safety or prevent assaults or dangerous acts, and less intrusive methods were available for administrators to use to prevent illicit activities by patients. (Iowa Civil Commitment Unit for Sex Offenders)</p>
<p>U.S. Appeals Court EQUIPMENT SECURITY</p>	<p><i>Baker v. RR Brink Locking Systems, Inc.</i>, 721 F.3d 716 (5th Cir. 2013). A pretrial detainee brought an action against the manufacturer of allegedly faulty locks on cell doors that permitted another inmate to enter the detainee's cell and assault and rape him. The manufacturer moved for summary judgment. The district court denied the motion and then denied reconsideration. The manufacturer moved for permission to file an appeal before the case had been adjudicated. The motion was granted in part. The appeals court affirmed, allowing the case to continue. (RR Brink, Harrison County Detention Center, Mississippi)</p>
<p>U.S. District Court TEMPERATURE ADA- Americans with Disabilities Act GENERAL CONDITIONS VENTILATION</p>	<p><i>Ball v. LeBlanc</i>, 988 F.Supp.2d 639 (M.D.La. 2013). State death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations of violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court granted declaratory and injunctive relief in part and denied in part. The court held that the temperature and humidity of cells presented a substantial risk of harm to death row inmates, as required for their claims against the prison and officials, alleging the conditions of confinement violated the Eighth Amendment. The court noted that: (1) the inmates were regularly subjected to temperatures above 90.5 degrees and heat indices above 100 degrees; (2) the heat index inside death row tiers was often higher than that outside the facility; (3) inmates were subjected to consecutive days with heat indices above 100 degrees; (4) inmates were at risk of heat-related illnesses including heat stroke and worsening of their underlying conditions, which included diabetes, hypertension, and uncontrolled blood pressure; and (5) two inmates were over age 55, increasing the risk for them.</p> <p>The court found that prison officials had knowledge that the heat and humidity in death row tiers placed inmates at a substantial risk of harm, as required to find the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims. The inmates had submitted multiple administrative complaints regarding the heat, and officials responded that they knew it was "extremely hot." According to the court, prison officials disregarded the substantial risk of serious harm to death row inmates regarding heat and humidity in cells, as required to find that the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims, where the officials did not take any actions to reduce the heat conditions despite knowledge of the conditions.</p>

The court found that there was no evidence that death row inmates were limited in any major life activities due to their medical conditions, including hypertension, obesity, and depression, as required for their claims against the prison and officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. (Louisiana State Penitentiary)

U.S. Appeals Court
ANTIQUATED
FACILITY
CELL CAPACITY
CROWDING
HYGIENE
PLUMBING
VENTILATION
WINDOWS

Budd v. Motley, 711 F.3d 840 (7th Cir. 2013). A state inmate filed a § 1983 action alleging that, as a pretrial detainee, he was subjected to unconstitutional conditions of confinement at a county jail and that the sheriff was deliberately indifferent to his medical needs. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee's allegations were sufficient to state a plausible claim under the Due Process Clause for subjecting him to unconstitutional conditions of confinement. The prisoner alleged that: (1) on one occasion he was confined with eight inmates in a portion of the county jail intended for three; (2) he had to sleep on the floor alongside broken windows and cracked toilets; (3) on another occasion he and other inmates had to sleep on the floor even though shower water leaked there; (4) cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating and cooling system; (5) inmates were denied any recreation; and (6) the jail furnished inmates with no supplies to clean for themselves.

The appeals court found that county jail officials were not deliberately indifferent to the pretrial detainee's serious medical needs, in violation of the Due Process Clause even if he was dissatisfied with the treatment he received from a jail nurse. The court noted that the detainee was taken to see a nurse as soon as he informed the officer on duty about his leg wound, he was taken to a hospital promptly after writing a letter to the sheriff asking to see a doctor, and the detainee received medical attention, medication, testing, and ongoing observation at the hospital. (Edgar County Jail, Illinois)

U.S. District Court
CROWDING
CAPACITY

Coleman v. Brown, 922 F.Supp.2d 1004 (E.D.Cal. 2013). State prison inmates brought Eighth Amendment challenges to the adequacy of mental health care and medical health care provided to mentally ill inmates and the general prison population, respectively. The inmates moved to convene a three-judge panel of the district court to enter a population reduction order that was necessary to provide effective relief. The motions were granted and the cases were assigned to same panel, which ordered the state to reduce the prison population to 137.5% of its design capacity. The state moved to vacate or modify the population reduction order. The district court denied the motion. The three-judge panel of the district court held that: (1) the state's contention that prison crowding was reduced and no longer a barrier to providing inmates with care required by the Eighth Amendment did not provide the basis for a motion to vacate the order on the ground that changed circumstances made it inequitable to continue applying the order; (2) the state failed to establish that prison crowding was no longer a barrier to providing inmates with care required by the Eighth Amendment; and (3) the state failed to establish it had achieved a durable remedy to prison crowding. (California Department of Rehabilitation and Corrections)

U.S. District Court
CROWDING
MEDICAL AREAS

Coleman v. Brown, 938 F.Supp.2d 955 (E.D.Cal. 2013). California state prisoners with serious mental disorders brought a class action against various prison and state officials, alleging failure to provide mental care in violation of the Eighth Amendment. After a three-judge court found that overcrowding was the primary cause of ongoing constitutional violations, and was affirmed by the United States Supreme Court, officials moved to terminate all prospective relief and vacate the judgment. The district court denied the motion, holding that: (1) there remained an ongoing violation of the Eighth Amendment in inadequate assessment, treatment, or intervention regarding prisoner suicides; (2) prisoners placed in administrative segregation units continued to face a substantial risk of harm; (3) prisoners continued to face delays in access to care; (4) prisons continued to have shortages in treatment space and access to beds; and (5) officials were deliberately indifferent in implementing policies to remedy the Eighth Amendment violations. (California Department of Corrections and Rehabilitation)

U.S. District Court
CAPACITY
CROWDING

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. District Court
HANDICAPPED
MEDICAL AREAS
RELIGIOUS AREAS

Cooke v. U.S. Bureau of Prisons, 926 F.Supp.2d 720 (E.D.N.C. 2013). Detainees who used wheelchairs and who were civilly committed at a federal corrections facility as sexually dangerous persons filed suit, seeking injunctive relief against the United States Bureau of Prisons for its alleged failure to accommodate their disabilities in violation of the Architectural Barriers Act (ABA), the Rehabilitation Act, the Religious Freedom Restoration Act (RFRA), and the First and Fifth Amendments. The government moved to dismiss and for summary judgment, and the detainees moved for discovery and to deny the government's motions. The district court granted the mo-

tions in part and denied in part. The court found that although the detainees failed to exhaust administrative remedies prior to filing suit under the ABA, the detainees were not “prisoners” as defined by the Prison Litigation Reform Act (PLRA) and thus did not have to exhaust administrative remedies before filing suit. The court found that the detainees, by alleging that, unlike detainees without disabilities, they could not access the prison’s religious library or an outdoor pagan worship area, stated claims under the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) in their action seeking injunctive relief against the Bureau of Prisons for failing to accommodate their disabilities. The court held that the detainees failed to state a claim for a violation of the constitutional right to privacy. According to the court, even assuming that the detainees had a limited constitutional right to privacy in medical treatment, the inmates alleged that the prison medical facility had no private, wheelchair-accessible examination room, but did not allege harm from the use or disclosure of their medical information. (Butner Federal Correctional Complex, North Carolina)

U.S. District Court
BEDS
CELL CAPACITY
CROWDING
HYGIENE
SAFETY
SANITATION

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee’s legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee’s Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials “triple-celled” inmates, allegedly leading to unsanitary conditions, amounted to a “custom” for the purposes of the former detainee’s § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity. The court held that the food service provider’s serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not “punishment,” as would support the inmate’s § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee’s diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate’s meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate’s due process rights. (Atlantic County Justice Facility, New Jersey)

U.S. District Court
HYGIENE
SANITATION

Florio v. Canty, 954 F.Supp.2d 227 (S.D.N.Y. 2013). A prisoner, proceeding pro se, brought a § 1983 action against a warden and a corrections officer, alleging violations of the Eighth Amendment. The defendants moved to dismiss. The district court granted the motion. The court held that the prisoner’s exposure to human waste on two occasions, for a total of less than a few hours, did not give rise to a serious risk of substantial harm. The prisoner alleged that prison officials waited 10 to 30 minutes after two separate incidents of a toilet overflowing to release the prisoner from his cell and having the prisoner clean the cell with inadequate cleaning gear and without training, allegedly resulting in the prisoner developing a foot fungus. The court held that this was not deliberate indifference to a substantial risk to his health and safety, as would violate the Eighth Amendment. The court noted that officials acted to alleviate the unsanitary conditions, the overflow also occurred in approximately 20 other cells, and the prisoner was not prevented from bathing or washing his clothes after the incidents. (Anna M. Kross Center, Rikers Island, New York City Department of Corrections)

U.S. Appeals Court
INTERCOM
AUDIO
COMMUNICATION

Goodman v. Kimbrough, 718 F.3d 1325 (11th Cir. 2013). The wife of a pretrial detainee who suffered from dementia and who was severely beaten by his cellmate filed a § 1983 action against jail officials in their individual capacities for alleged violation of the Due Process Clause by deliberate indifference to a substantial risk of harm to the detainee. The wife also asserted a supervisory liability claim against the sheriff in his official capacity and a state law claim for loss of support and consortium. The district court granted summary judgment for the defendants. The wife appealed. The appeals court affirmed. The court held that there was no evidence that jail officials were subjectively aware of a risk of serious harm to which the pretrial detainee was exposed from his severe beating by a cellmate, and that the officials deliberately disregarded that risk, as required to support the detainee’s § 1983 claim of deliberate indifference in violation of the Due Process Clause. According to the court, the officers’ failure to conduct cell checks and head counts and their deactivation of emergency call buttons constituted negligence but did not justify constitutional liability under § 1983. According to the court, jail officials’ policy violations by failing to enter every cell in conducting head counts and in deactivating emergency call buttons did not constitute a custom so settled and permanent as to have the force of law. (Clayton County Jail, Georgia)

U.S. District Court
PLUMBING
MAINTENANCE

Grohs v. Yatauro, 984 F.Supp.2d 273 (D.N.J. 2013). A civilly-committed resident at a special treatment unit (STU) operated by the New Jersey Department of Corrections (NJDOC) brought action against NJDOC officials, alleging violations of his substantive due process rights under § 1983. The district court held that the resident’s claims against the officials in their official capacities were barred by sovereign immunity. The court held that the resident’s allegations adequately pled the officials’ personal involvement in his complaint that: (1)

there were visibly leaking steam pipes in a special treatment unit (STU) for which trash cans were used to collect water; (2) NJDOC officials personally toured STU; (3) STU received numerous written complaints from residents about inadequate hot water; and (4) an STU assistant administrator told the resident that defective piping valves were too expensive to repair. The court found that the officials were subject to liability under § 1983 in their individual capacities. The court held that NJDOC officials were not entitled to qualified immunity from the civilly committed resident's § 1983 conditions of civil commitment claim under the Due Process Clause, arising from inadequate hot water at a special treatment unit (STU) in which he was housed. (Special Treatment Unit, Avenel, Middlesex County, New Jersey)

U.S. District Court
ADA-Americans with
Disabilities Act
MEDICAL AREA

Morris v. Dallas County, 960 F.Supp.2d 665 (N.D.Tex. 2013) The parents of a detainee who died while in custody at a county jail brought a § 1983 action in state court against the county, the county jail medical staff, and officials, alleging violation of the Americans with Disabilities Act (ADA) and constitutional violations. The action was removed to federal court. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment for the defendants was precluded by fact issues with regard to: (1) the nurses who were defendants; (2) the claim that the county failed to monitor the detainee's health; and (3) failure to train officers on how to observe and assess the jail detainees' medical needs and respond to those needs. The court noted that the way the jail infirmary was structured, including the lack of direct access between the detainees and the nursing staff, and the absence of procedures for communication between the nurses and the correctional officers concerning emergent medical symptoms, were a county custom. According to the court, whether that custom was adopted or continued, even though it was obvious that its likely consequence would be a deprivation of medical care for the detainees, precluded summary judgment in favor of the county in the § 1983 deliberate indifference claim brought against the county. (Dallas County Jail, Texas)

U.S. District Court
SANITATION

Nelson v. District of Columbia, 928 F.Supp.2d 210 (D.D.C. 2013). A detainee brought a § 1983 claim against the District of Columbia arising from his stay in jail. The defendant moved to dismiss and the district court granted the motion. The court held that denial of one telephone call and access to stationery during the detainee's five-day stay in a "Safe Cell," which was located in the jail's infirmary, did not implicate his First Amendment right of free speech or right of access to courts. The court found that the detainee's alleged exposure to "dried urine on the toilet seat and floor" and garbage during his five-day stay, along with the denial of a shower, did not rise to the level of a Fifth Amendment due process violation. According to the court, placement of detainee in a Safe Cell was not motivated by a desire to punish the detainee, but rather by a nurse's desire to attend to the detainee's ailments after his "legs and back gave out" twice. The court noted that denial of the detainee's request to have the cell cleaned was for the non-punitive reason that the detainee would not be in the cell that long. (D.C. Jail, District of Columbia)

U.S. District Court
ADA- Americans with
Disabilities Act
HYGIENE
SAFETY
HANDICAPPED

Newell v. Kankakee County Sheriff's Department, 968 F.Supp.2d 973 (C.D.Ill. 2013). A disabled federal detainee who was housed at a county jail for two months brought an action against the county sheriff's department and county officials under § 1983 and the Americans with Disabilities Act (ADA). The defendants moved to dismiss. The district court denied the motion. The court held that the detainee's allegations that the county officials developed, supervised, and enforced policies and practices of the jail, ensured that grievances were received in the proper manner and were properly responded to, and were aware of his serious medical needs and his grievances, yet turned a blind eye to the situation, were sufficient to state a claim against the officials in their individual capacities in his civil rights action alleging he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail. The detainee allegedly had multiple disabilities that he sustained in an auto accident, including weakness and numbness in his left side and he partially dragged his left leg. He also had incontinence with urine and bowel movements and required the use of adult diapers. He was unable to stand still without assistance, which made showering and using the toilet difficult. The detainee alleged that despite his obvious disabilities and medical issues, he was assigned to a regular dorm on the top floor of the jail, and a to a top bunk. He had to hop on one leg to go up or down the stairs and needed assistance from other inmates to get into and out of his bunk. He was allegedly not given adult diapers until his third day at the jail, and even then, he was not given an adequate supply of diapers and would sometimes sit in a soiled diaper for days, and in clothes with urine and feces on them. He alleged that he was not given enough biohazard bags, and the soiled diapers and bags piled up in his cell. One day, when there was no one to assist the detainee, he fell while attempting to get out of his bunk and he sat for two hours until someone came to help him. As a result, his left leg worsened and his right leg was numb, he could not walk at all and was forced to crawl down stairs on his buttocks, and scoot along the floor and walk on his hands.

The court found that the detainee's allegations that he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail, and that the jail was not an exceptionally large facility, were sufficient to state claim against the corrections officer working at the jail in his individual capacity. According to the court, the situation described by the inmate, if true, would have been obvious to any correctional officer working in the area in which the inmate was housed.

The court held that the detainee's allegations that correctional staff at the county jail acted pursuant to an official policy or custom not to perform a medical intake, investigate inmates' medical issues or complaints about problems with walking if they were ambulatory, nor provide sufficient medically-necessary hygiene items such as adult diapers to inmates, among other things, were sufficient to allege that an official policy or custom was a "moving force" in the alleged violation of his rights, as required to state official capacity claims under Monell. The court held that the detainee's allegation that he was barred from basic facilities on the basis of his disabilities while he was housed at the county jail was sufficient to allege discriminatory intent, as required to state an ADA claim against the county sheriff's department. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
ANTIQUATED
FACILITY
ASBESTOS
MAINTENANCE

Pratt v. City of New York, 929 F.Supp.2d 314(S.D.N.Y. 2013). A prisoner brought a § 1983 action against a city, its Commissioner of Corrections, and other prison officials, alleging cruel and unusual punishment in violation of Eighth Amendment based on the prison's failure to address and mitigate asbestos exposure in prison dormitories. The district court denied the defendants' motion to dismiss for failure to state a claim. The court held that the prisoner stated a § 1983 claim that the prison's failure to address and mitigate friable asbestos exposure constituted cruel and unusual punishment under the Eighth Amendment, by alleging that the prison dormitory was contaminated with asbestos and that prison maintenance deliberately avoided testing potentially contaminated pipes and older floor tiles for asbestos exposure. According to the court, exposure to friable asbestos poses a sufficiently serious risk to a prisoner's health as to constitute a serious deprivation, as an element of a claim of cruel and unusual punishment under the Eighth Amendment. The prisoner alleged that most of the facility pipes and the ceiling heating system were deteriorating due to roof leaks, and that leaking water captured small asbestos particles ("friable asbestos") from the deteriorated pipes and heating system and brought the friable asbestos into the dormitory. According to the prisoner, the friable asbestos is also blown throughout the dormitory by the ceiling heating system. The prisoner was a licensed asbestos remover. (Anna M. Koss Center, Rikers Island, New York City, New York)

U.S. Appeals Court
CELL SIZE
CROWDING
HYGIENE
MEDICAL AREAS
RECREATION
AREAS

Turley v. Rednour, 729 F.3d 645 (7th Cir. 2013). An Illinois prisoner serving a life sentence brought a § 1983 action against prison officials, alleging that the prisoner and other inmates classified as low-aggression offenders in the prisoner's cellhouse were subject to lockdowns for more than 50 percent of the days in a 33-month period. The district court dismissed the complaint at the screening stage for prisoner civil actions and the prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner had exhausted his administrative remedies. The court found that frequent unit-wide prison lockdowns for substantial periods of time deprived him of exercise and caused him various health issues, such as irritable bowel syndrome, severe stress, headaches, and tinnitus, stated a claim for an Eighth Amendment violation. According to the court, the prisoner sufficiently alleged prison officials' deliberate indifference to physical and psychological injuries, as required to state a claim for an Eighth Amendment violation, based on excessive prison lockdowns. The court noted that the prisoner alleged that he had filed multiple grievances about prison conditions, including a grievance specifically challenging small cells, and that the prison was the subject of numerous past lawsuits, including one specifically ordering a remedial plan for overcrowding, small cells, and lack of adequate medical care and hygiene. (Menard Correctional Center, Illinois)

U.S. Appeals Court
NOISE
CELL CAPACITY
HYGIENE
SAFETY
SANITATION
TEMPERATURE
VENTILATION

Walker v. Schult, 717 F.3d 119 (2nd Cir. 2013). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a warden and various other prison officials and employees, alleging violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's allegations were sufficient to plead that he was deprived of the minimal civilized measure of life's necessities and was subjected to unreasonable health and safety risks, as required to state a § 1983 claims against prison officials for violations of the Eighth Amendment. The prisoner alleged that: (1) for approximately 28 months he was confined in a cell with five other men with inadequate space and ventilation; (2) the heat was stifling in the summer and it was freezing in the winter; (3) urine and feces splattered the floor; (4) there were insufficient cleaning supplies; (5) the mattress was too narrow for him to lie on flat; and (6) noisy and crowded conditions made sleep difficult and created a constant risk of violence. The court also found that the prisoner's allegations were sufficient to plead that prison officials knew of and disregarded excessive risks to his health and safety, as required to find that the officials were deliberately indifferent. The prisoner alleged that officials knew of overcrowding in his cell, that he spoke with some officials about the conditions, that officials were aware noise was loud and constant, that they were aware of temperature issues, that the prisoner informed officials that his bed was too narrow, that one official failed to issue cleaning supplies, and that conditions did not change despite his complaints. (Federal Correctional Institution, Ray Brook, New York)

2014

U.S. District Court
ADA- Americans with
Disabilities Act
SHOWER
TOILET
HANDICAPPED

Blossom v. Dart, 64 F.Supp.3d 1158 (N.D.Ill. 2014). A disabled detainee in a county jail brought an action against a county and a county sheriff, asserting a § 1983 claim for deprivation of his Fourteenth Amendment rights and alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The sheriff filed a motion to dismiss for failure to state a claim. The district court denied the motion. The court held that the disabled detainee, who suffered injuries due to the lack of accommodation for his disability, sufficiently alleged that the sheriff had personal knowledge of, or involvement in, the alleged deprivation of his Fourteenth Amendment rights, so as to state a § 1983 claim against the sheriff in his individual capacity. The detainee alleged that the sheriff acquired personal knowledge of the fact that disabled prisoners assigned to a certain jail division had sustained injuries because shower and toilet facilities were not equipped with appropriate grab bars, toilet seats, and shower seats, and the detainee alleged that despite revising the jail's housing assignment policy for detainees who used wheelchairs, the sheriff refused to revise the policy for other disabled detainees. The court also found that the detainee sufficiently alleged that there was an official policy allowing disabled detainees to be housed in non-accessible housing units that continued to exist despite the knowledge that the policy had caused serious injuries to disabled detainees. (Cook County Jail, Illinois)

U.S. District Court
FACILITY DESIGN
EQUIPMENT

Dilworth v. Goldberg, 3 F.Supp.3d 198 (S.D.N.Y. 2014). In a county jail detainees' action against a county, the detainees moved for spoliation sanctions based on the county's alleged failure to preserve capital project plans that allegedly showed surveillance camera locations, and videos from a surveillance camera in the housing area where one detainee was allegedly beaten. "Spoliation" is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. The district court denied the motion, finding that the detainees failed to show that the capital project plans existed,

and failed to show that a surveillance camera in the housing area existed. The court noted that ambiguous statements made by a jail official that he was not sure if such plans existed but that they might indicate camera locations, and a speculative expert opinion stating that it was customary for a system installer to provide an “as built” floor plan detailing camera placement, were insufficient to show that such plans in fact existed for the jail. (Westchester County Department of Corrections, New York)

U.S. Appeals Court
CELL SIZE
FURNISHINGS
PRIVACY

Ford v. Bender, 768 F.3d 15 (1st Cir. 2014). A pretrial detainee commenced an action alleging that prison officials violated his due process rights by holding him in disciplinary segregated confinement throughout the period of pretrial detention and into the subsequent criminal sentence as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence. The district court held that the detainee's punitive disciplinary confinement violated due process, and largely denied the officials' claims of qualified immunity. The court awarded the detainee partial money damages and equitable relief after a three-day bench trial, and awarded attorneys' fees and costs on the detainee's motion. The officials appealed. The appeals court reversed in part, vacated in part, and remanded. The court noted that conditions in the disciplinary unit are considerably more onerous than conditions of confinement for the general population--an inmate is kept for twenty-three hours a day in a cell measuring seven by twelve feet, each cell has a solid steel door with a small inset window, a narrow window to the outdoors, a cement bed, desk, and stool, and a toilet visible through the inset window. An inmate typically leaves his cell for only one hour a day to exercise (five days a week) and to shower (three days a week). He is subject to strip searches whenever he enters or leaves his cell. When an inmate is out of his cell for any reason, he is manacled and placed in leg chains. Inmates are socially isolated. Each inmate receives his meals through a slot in the steel door and is given only twenty minutes to eat. The prison library is off-limits, although an inmate may receive law books from a “book cart,” which requires a formal request and typically results in a wait of eight days. Communication with other inmates, guards, and the outside world is severely restricted. (Massachusetts Correctional Institution at Cedar Junction)

U.S. District Court
CELLS
EQUIPMENT
MAINTENANCE
SECURITY

Freeland v. Ballard, 6 F.Supp.3d 683 (S.D.W.Va. 2014). A prisoner brought an action against prison officials, alleging the officials were deliberately indifferent to serious security breaches and failed to protect him from another inmate who escaped a segregation cell and attacked him with a piece of metal. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's allegation that there was at least one prior incident when an inmate repeatedly beat on his door until it became unsecured and permitted the inmate to escape from the cell and assault another prisoner, did not give rise to a plausible claim that prison officials had actual knowledge of a substantial risk of harm to the prisoner and disregarded that risk in violation of the Eighth Amendment. But the court found that the prisoner's allegations, that an inmate escaped a segregation cell and attacked prisoner with a piece of metal but prison officials did nothing to intervene to stop the attack when they had the opportunity to do so, and that the officials were aware of prior incidents of inmates beating their doors open and attacking other inmates, were sufficient to state an Eighth Amendment claim. (Mount Olive Correctional Complex, West Virginia)

U.S. Appeals Court
LIGHTS

Greening v. Miller-Stout, 739 F.3d 1235 (9th Cir. 2014). A state prisoner brought an action against prison officials, claiming that exposing him to constant lighting for 13 days violated the Eighth Amendment's bar against cruel and unusual punishment. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court reversed and remanded. The court found that summary judgment was precluded by factual issues as to: (1) the brightness of the continuous lighting in the prisoner's special management unit cell; (2) the effect on the prisoner of the continuous lighting; and (3) whether prison officials were deliberately indifferent. The inmate was housed in the Special Management Unit (SMU), an administrative segregation unit with single-cells that are continuously illuminated for twenty-four hours a day. Each cell in the SMU has three, four-foot-long fluorescent lighting tubes in a mounted light fixture. A cell occupant can use a switch inside the cell to turn off two of the tubes, but the center tube is always on. The tube is covered by a blue light-diffusing sleeve. Institution policy requires welfare checks in the SMU to be conducted every thirty minutes, which is more frequent than checks for the general prison population. Officials asserted that continuous illumination allows officers to “assess the baseline behavior of offenders to ensure they are not at risk of harming themselves or making an attempt to harm staff, cause property damage or incite problem behavior from other offenders.” The officials stated that turning the cell lights on and off every thirty minutes would be disruptive to the cell occupants. The prisoner alleged that the light was so bright he could not sleep, even with “four layers of towel wrapped around his eyes.” He alleged that the lighting gave him “recurring migraine headaches” and that he could not distinguish between night and day in the cell. (Airway Heights Corrections Center, Washington)

U.S. District Court
TEMPERATURE

Hinojosa v. Livingston, 994 F.Supp.2d 840 (S.D.Tex. 2014). The mother of a former inmate who died of hyperthermia while incarcerated brought an action against the prison's health care provider, asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging the provider's failure to make accommodations for the inmate's disabilities resulted in the inmate's death. The provider moved to dismiss. The district court denied the motion. The court held that the mother alleged sufficient facts to state that the inmate was discriminated against by the prison's health care provider, in support of her claims under the ADA and the Rehabilitation Act, by alleging that the provider knew of the risks and dangers associated with certain medical conditions and medications, that the provider knew the inmate suffered from those conditions and used those medications, and that despite that knowledge, the provider failed to make reasonable accommodations, resulting in the inmate suffering more pain and punishment than non-disabled prisoners, namely, his death. The court noted that the mother alleged that the provider knew both that the inmate suffered from hypertension, diabetes, schizophrenia, and/or depression, and was prescribed medications to treat his disabilities, and that extreme temperatures could be deadly, but still failed to protect the inmate from the extreme temperatures that ultimately resulted in the inmate's death. The court found that the mother alleged sufficient facts concerning the accommodations that should have been provided by the prison's health care provider without a request, but were

denied or refused, as well as which facilities, programs, or services should have been modified by the provider, to state claims under the ADA and the Rehabilitation Act. The mother complained that the provider's intake process was flawed in that it could take up to 10 days for prisoners to receive an intake physical, and that the delay created a loophole that left inmates with heat sensitive conditions and disabilities especially vulnerable to death because they did not receive accommodations for their heat sensitive disabilities, and that the provider's failure to employ 24-hour medical staff at the prison resulted in a fatal delay and denial of vital medical care to the inmate. (University of Texas Medical Branch, Texas Department of Criminal Justice Garza West Unit)

U.S. District Court
PLUMBING
MAINTENANCE

Morris v. Corrections Corporation of America, 75 F.Supp.3d 457 (D.D.C. 2014). A former District of Columbia inmate brought a state-court negligence action against a private prison operator, seeking damages for a scrotal burn injury he allegedly sustained when the water temperature in a prison shower spiked unexpectedly. The operator moved the action to federal court, and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the operator had notice of allegedly dangerously high water temperatures in the prison showers, and the operator's alleged breach of its duty to properly maintain the shower facilities was not the proximate cause of the scrotal burn. (Correctional Treatment Facility, operated by Corrections Corporation of America, Washington, D.C.)

U.S. District Court
HANDICAPPED
MEDICAL AREAS

Stoudemire v. Michigan Dept. of Corrections, 22 F.Supp.3d 715 (E.D.Mich. 2014). A female former prisoner, who was a double amputee, brought an action against the Michigan Department of Corrections (MDOC) and various MDOC-associated officers and healthcare professionals, asserting violations of § 1983, the Americans with Disabilities Act (ADA), and state law. The prisoner alleged failure to provide adequate health care and accommodations for disabled individuals. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims. The defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand the district court held that: (1) a fact question as to whether the warden was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed precluded summary judgment, and (2) it was clearly established that deliberate indifference to serious medical needs of prisoners constituted the unnecessary and wanton infliction of pain proscribed by Eighth Amendment. The prisoner alleged that she acquired MRSA following the amputation of her left leg. As a result of her condition, her housing assignment at the facility was changed from the infirmary to the segregation unit. The prisoner alleged that there was an absence of handicap facilities within this unit, that she was unable to safely transfer from her wheelchair to the bed or toilet, and that she was allowed only one shower during the two weeks while housed in segregation. (Huron Valley Women's Corr. Facility, Michigan)

U.S. District Court
TEMPERATURE

Woodson v. City of Richmond, Va., 2 F.Supp.3d 804 (E.D.Va. 2014). A detainee in a city jail filed a § 1983 action against the city, the sheriff, and deputies, claiming constitutional and state law violations arising from the detainee's heat stroke allegedly caused by deliberate indifference to his need for medical care. The detainee was housed on the top floor of the jail during a time when outside temperatures exceeded 100 degrees, and when interior temperatures were even higher. The inmate suffered a heat stroke and was found unresponsive in his cell, and he had a body temperature of 106.1 degrees. The sheriff cross-claimed against the city for indemnification or contribution. The city moved to dismiss the cross-claim. The court dismissed the cross-claim, finding that the sheriff lacked the right to contribution and the right to indemnification for § 1983 claims or state law claims. (Richmond City Jail, Virginia)

2015

U.S. Appeals Court
TEMPERATURE

Ball v. LeBlanc, 792 F.3d 584 (5th Cir. 2015). Death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations that heat in the prison violated the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). Following a bench trial, the district court sustained the Eighth Amendment claims, rejected the disability claims, and issued a permanent injunction requiring the state to install air conditioning throughout death row. The department and officials appealed and the inmates cross-appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that: (1) the district court did not abuse its discretion by admitting evidence of, or relying on heat index measurements of death-row facilities; (2) the district court did not clearly err in finding that heat in death-row cells posed a substantial risk of serious harm to inmates and that prison officials were deliberately indifferent to the risk posed to death-row inmates by the heat in prison cells; (3) housing of death-row inmates in very hot prison cells without sufficient access to heat-relief measures violated the Eighth Amendment; (4) inmates were not disabled under ADA or RA; and (5) permanent injunctive relief requiring the state to install air conditioning throughout death-row housing violated the Prison Litigation Reform Act (PLRA), where acceptable remedies short of facility-wide air conditioning were available. (Department of Public Safety and Corrections, Louisiana State Penitentiary)

U.S. District Court
VENTILATION
SANITATION

Barnes v. County of Monroe, 85 F.Supp.3d 696 (W.D.N.Y. 2015). A state inmate brought a § 1983 action against a county, county officials, and correctional officers, alleging that the officers used excessive force against him and that he was subjected to unconstitutional conditions of confinement during his pretrial detention. The defendants moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the former pretrial detainee's allegation that a county correctional officer used excessive force when he responded to a fight between the detainee and fellow inmates, and jumped on the detainee's back, striking him in face and knocking out a tooth, and that the officer was not merely using force to maintain or restore discipline but that the entire incident was "premeditated," stated a § 1983 excessive force claim against officer under the Due Process Clause. According to the court, the former detainee's allegations that county correctional officers used excessive force when they pushed him face-first into a glass window, pushed him to the floor, kicked, stomped on and punched him, and used handcuffs to inflict pain, that as a result of the

altercation, the inmate urinated and defecated on himself and experienced dizziness and a concussion, and that the force used on him was in response to his reaching for legal papers and attempting to steady himself, stated a § 1983 excessive force claim against the officers under the Due Process Clause. The court found that the former detainee's allegations that, after he was released from a special housing unit (SHU), county correctional officers placed him in a poorly ventilated cell where he was exposed to human excrement and bodily fluids over the course of multiple days, and that he was subjected to extreme conditions in the SHU by way of 24-hour lighting by the officers, stated a § 1983 conditions-of-confinement claim against the officers under the Due Process Clause. (Upstate Correctional Facility and Monroe County Jail, New York)

U.S. District Court
CROWDING
ADA- Americans with
Disabilities Act
PLUMBING
SANITATION

Bell v. Lindsay, 116 F.Supp.3d 511 (D. Md. 2015). A pretrial detainee brought a § 1983 action alleging that officers used excessive force when arresting him, in violation of the Fourth Amendment, and that prison employees subjected him to overcrowded conditions of confinement and manifested deliberate indifference to his medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the detainee: (1) failed to state a conditions of confinement claim based on overcrowding; and (2) failed to state a claim under Title II of Americans with Disabilities Act (ADA), absent allegations that the detainee was disabled, that he was denied any benefit of prison's services, programs, or activities, and that any such exclusion or denial was by reason of his disability. According to the court, the detainee's allegations that he was placed into a holding room at the prison with 25 to 30 inmates without a toilet or sink and forced to sleep on the floor failed to state a § 1983 Fourteenth Amendment conditions of confinement claim, absent allegations that the detainee was in the holding room for any substantial period of time, or that employees were personally involved in the violation of detainee's constitutional rights. (George W. Hill Correctional Facility, Maryland)

U.S. District Court
CROWDING
TEMPERATURE

Cano v. City of New York, 119 F.Supp.3d 65 (E.D.N.Y. 2015). Pretrial detainees temporarily housed in a booking facility brought an action against a city and city officials under § 1983 alleging deliberate indifference to detainee health in violation of the Due Process Clause of the Fourteenth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) temporarily subjecting detainees to overcrowded jail cells was not deliberate indifference; (2) failure to provide sleeping equipment, such as beds, cots, pillows, blankets, or bedding was not deliberate indifference; (3) availability of only one toilet for 24 hours in each overcrowded holding cell was not deliberate indifference; (4) alleged failure to provide food and water was not deliberate indifference; (5) police officers were not subjectively aware of a risk to the detainees; (6) police officers did not act with punitive intent; (7) placement of pretrial detainees in jail cells with alleged rodent and insect infestations was not deliberate indifference; (8) placement of pretrial detainees in jail cells with alleged violent offenders that had limited police supervision, allegedly leading to fights, thefts, and bullying, was not deliberate indifference to detainee health; and (9) alleged exposure of pretrial detainees to extreme hot or cold temperature conditions in unventilated jail cells was not deliberate indifference to detainee health that would violate the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainees were not kept in the cells for more than 24 hours, and were not harmed by the alleged overcrowding. (Brooklyn Central Booking, City of New York Police Department, New York)

U.S. Appeals Court
FACILITY DESIGN
SPECIAL CELL

Castro v. County of Los Angeles, 797 F.3d 654 (9th Cir. 2015). An arrestee brought an action against a county, its sheriff's department, and two officers under § 1983 for violation of his Fourth Amendment right to be protected from harm by other inmates, arising out of an attack against the arrestee by another arrestee with whom he was jailed. A jury returned a verdict for the arrestee, and the district court denied the defendants' motion for judgment as a matter of law. The defendants appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer; (2) substantial evidence supported the jury's determination that the officer was deliberately indifferent to a substantial risk of serious harm to the arrestee; (3) sufficient evidence supported the jury's determination that the officer's deliberate indifference was the actual and proximate cause of harm to the arrestee; (4) sufficient evidence supported the jury's determination that the supervising officer was aware of, but disregarded, the risk to the arrestee posed by the other inmate; (5) the design of a jail by a municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983; (6) arrestee failed to establish that the county had actual knowledge of a risk of harm from the design of the jail, as required to establish liability under § 1983; and (7) the award of future damages to the arrestee was supported by the record. The jury returned a verdict for the arrestee on all counts and awarded him \$2,605,632 in damages. The parties later stipulated to \$840,000 in attorney fees, \$18,000 in punitive damages.

The arrestee had been placed in a "sobering cell" after his arrest for public drunkenness and was seriously injured by another drunken inmate in the sobering cell. When the other inmate was admitted, staff determined that he posed a threat to officers, requiring supervision by two officers at all times. The other arrestee was placed in the same cell as the plaintiff, even though the jail policy was to place combative inmates in a separate cell, and separate cells were available but left unused on the night of the incident.

The jail was purportedly in violation of a state regulation requiring monitoring equipment in sobering cells, as required to establish that the county was deliberately indifferent to the Fourth Amendment right of pretrial detainees to be protected from harm by other inmates and was liable under § 1983 for injuries sustained by the arrestee. According to the court "One would assume that for any given construction project, including jails, the municipality's governing body—or a committee that it appoints to act in its stead—reviews bids, considers designs, and ultimately approves a plan for the facility and allocates funds for its construction. These choices are sufficient, in our opinion, to meet the definition of a formal municipal policy..." (Los Angeles Sheriff's West Hollywood Station, California)

U.S. District Court
HYGIENE
SANITATION

Fant v. City of Ferguson, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
LIGHTS

Grenning v. Stout, 144 F.Supp.3d 1241 (E.D. Wash. 2015). A state prisoner commenced a § 1983 action against prison officials, claiming that exposing him to constant lighting for 13 days in segregation management unit (SMU) violated the Eighth Amendment's bar against cruel and unusual punishment. The district court granted summary judgment to the officials and the prisoner appealed. The appeals court reversed and remanded. The district denied summary judgment, in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the state prisoner suffered harm resulting from his exposure to continuous light for 13 days; (2) whether state prison officials acted with deliberate indifference in exposing the prisoner to continuous light for 13 days; (3) whether the prisoner had suffered an immediate injury from being exposed to continuous light in the prison's segregation management unit; (4) whether legal damages would be inadequate to compensate the prisoner for his alleged suffering or to restore his health, as to the costs of changing the lighting; and (5) whether penological purposes would be undermined if the lighting was changed. The court noted that the prisoner had offered evidence of the harm he already had suffered due to the lighting conditions, including testimony of a board certified sleep medicine expert. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
TEMPERATURE
VENTILATION

Hinojosa v. Livingston, 807 F.3d 657 (5th Cir. 2015). The mother of an inmate who died of complications from heatstroke while incarcerated brought an action against prison officials and employees, the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch (UTMB), and an official of UTMB, alleging that they were responsible for her son's death. Prison officials moved to dismiss on the basis of qualified immunity. The district court deferred ruling and the officials appealed. The appeals court dismissed the action, finding that it did not have jurisdiction over the appeal. The court held that the inmate's factual allegations, if true, would be sufficient to establish prison officials' liability for an Eighth Amendment violation and to overcome a qualified immunity defense, and that further clarification of the facts was necessary for the district court to rule on the prison officials' qualified immunity defense. The mother of the inmate alleged that officials subjected the inmate to dangerous heat conditions in conscious disregard of the serious risk that the heat posed for prisoners who, like the inmate, suffered from certain medical conditions, took certain medications, and had recently been transferred from air-conditioned jails to non-climate-controlled facilities. The mother alleged that the officials had promulgated and had power to change policies that allegedly caused the inmate's death, and the Eighth Amendment right not to be subjected to extremely dangerous temperatures without adequate ameliorative measures had been clearly established at the time of inmate's death. (Garza West Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
SEPARATION
CELLS

Incumaa v. Stirling, 791 F.3d 517 (4th Cir. 2015). An inmate brought a § 1983 action against the acting director of a state department of corrections, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Fourteenth Amendment procedural due process in his placement in solitary confinement for 20 years following his participation in a riot. The inmate was a member of the Nation of Gods and Earths ("NOGE"), also known as the "Five Percenters." Prison policy required the inmate to renounce his affiliation with NOGE as a condition of being released from segregation. The inmate asserted that NOGE was a religion and that he was being asked to renounce his religion in order to be released from solitary confinement, in violation of RLUIPA. The district court granted the director's motion for summary judgment and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prison policy did not force the inmate to choose between continued adherence to his religion or release from solitary confinement. But the court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison's review process for inmates in solitary confinement was adequate. The court noted that the inmate was subject to near-daily cavity and strip searches, he was confined to a small cell for all sleeping and waking hours, aside from 10 hours of activity outside the cell per month, he was denied educational, vocational, and therapy programs, the inmate was socially isolated, and confinement was indefinite. (South Carolina Department of Corrections)

U.S. Appeals Court
PADDED CELL

Letterman v. Does, 789 F.3d 856 (8th Cir. 2015). Parents of a deceased prisoner, who died from injuries suffered while in jail, brought a § 1983 action against a prison sergeant, lieutenant, and case manager, alleging that the employees were indifferent to the prisoner’s medical needs. The prisoner had been arrested for possession of marijuana and was given a 120 “shock sentence” in confinement. He was to have been personally observed every 15 minutes by staff and procedure required the prisoner to give a verbal response each time. After a shift change, the oncoming officer decided to monitor the prisoner via closed circuit television rather than making the required in-person rounds. During the shift, the prisoner injured himself in the cell and eventually died from his injuries. The district court denied the employees’ motion for summary judgment, based on assertions of qualified immunity. The employees appealed. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether a prison sergeant, who was in charge of the unit where prisoner was kept, and a lieutenant, were deliberately indifferent to the risk of harm to the prisoner who died from injuries allegedly sustained in a padded cell. (Missouri Western Reception, Diagnostic and Correction Center)

U.S. District Court
DOUBLE CELLING/
BUNKING

Perry v. Dickhaut, 125 F.Supp.3d 285 (D. Mass. 2015). A state prisoner brought a § 1983 action against prison officials and a prison nurse, asserting Eighth Amendment claims for excessive force in attempting to double-bunk the prisoner. The district court granted the motions in part and denied in part. The court held that prison officials did not act with deliberate indifference to the risk of serious harm from prisoner violence, as would violate the Eighth Amendment, by repeatedly double-bunking the prisoner in a cell with another prisoner. According to the court, there was no evidence that the officials knew or should have known that the prisoner and his cellmates were enemies, and making an exception to the double-bunk system for one inmate simply because he was purposefully disruptive would pose substantial risks for the overall management of prison. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. District Court
CELLS
SPECIAL CELL
SEPARATION

Turner v. Palmer, 84 F.Supp.3d 880 (S.D.Iowa 2015). A 16-year-old who had been adjudicated delinquent and who had prior psychiatric hospitalizations, brought an action against the operators of a state-run juvenile home under § 1983 for violations of her due process rights under the Fifth, Eighth, and Fourteenth Amendments, based on the alleged systematic and excessive use of cement-walled isolation cells. The defendants moved to dismiss. The district court denied the motion, finding that the juvenile stated a claim for due process violations and alleged a continuing violation. The facility had several small cement isolation cells, labeled Quiet Rooms, Safety Rooms, Comfort Rooms, and the Special Unit. The prisoner alleged that she spent numerous consecutive weeks locked in isolation cells, spending 289 out of the 528 days she was at the facility in isolation. She claimed she was only given one thin mat to sleep on, was only permitted to exit the cell to use the restroom; and during many of these stays, she was not allowed any homework, classroom instruction, reading material, or outside communication. (Iowa Juvenile Home, Toledo, Iowa)

SECTION 16: FALSE IMPRISONMENT/ARREST

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1967

U.S. Supreme Court
FALSE ARREST

Pierson v. Ray, 386 U.S. 547 (1967). Pierson, together with fourteen other members of a group of white and negro clergymen, was arrested by Jackson, Mississippi policemen while attempting to use a segregated interstate bus terminal waiting room in Jackson. The group was charged with breaking the peace in violation of a Mississippi statute. All fifteen were tried before a municipal police justice, found guilty, sentenced to four months in jail, and fined \$200 each. After one of the group obtained a trial de novo on appeal, and a subsequent directed verdict, charges against the others were dropped. The group then initiated this action under 42 U.S.C. Section 1983 for deprivation of civil rights and at common law for false arrest and imprisonment.

The jury found for the police in the district court. On appeal, the Fifth Circuit held that the municipal police justice's acts were immune under both Section 1983 and state common law; that the police had immunity under state common law for false arrest if they had probable cause to believe the statute they were enforcing was constitutional, but that by virtue of Monroe v. Pape, they had no such immunity under Section 1983 where the state statute was later declared unconstitutional.

HELD: The well established common-law principal that judges are immune from liability for damages for acts committed within their judicial jurisdiction was not abolished by Section 1983, 386 U.S. at 554.

HELD: "[T]he defense of good faith and probable cause....available to the [police] officers in the common-law action for false arrest and imprisonment, is also available to them in the action under Section 1983." 386 U.S. at 557. (Jackson, Mississippi)

1976

U.S. Appeals Court
FALSE
IMPRISONMENT

Bryan v. Jones, 530 F.2d 1210 (5th Cir. 1976), cert. denied, 429 U.S. 865. The jury should be allowed to consider whether a sheriff is acting in good faith if he relies on the district attorney's office notice that the imprisonment was legal. (Dallas County Jail, Texas)

1979

FALSE
IMPRISONMENT

Baker v. McCollan, 99 S.Ct. 2689 (1979). McCollan's brother duplicated McCollan's driver's license, substituting his own picture for McCollan's. The brother was arrested on narcotics charges and used the license as identification. Initially released on bond, an arrest warrant was later issued. Pursuant to that warrant, McCollan was arrested by the Sheriff's Department. Despite his protest, McCollan was detained for several days before the error was discovered, and he was released. McCollan brought this 42 U.S.C. Section 1983 action against the sheriff and his surety, claiming his detention in jail deprived him of liberty without due process of law. The district court for the Northern District of Texas directed verdict for the sheriff, and the Fifth Circuit Court of Appeals reversed and remanded. The Supreme Court granted certiorari.

HELD: McCollan failed to satisfy the threshold requirement of Section 1983, that the plaintiff be deprived of a right secured by the constitution and the laws and had no recognizable Section 1983 claim. (99 S.Ct. at 2692.) (Potter County Jail, Texas)

1980

U.S. Appeals Court
FALSE
IMPRISONMENT

Wood v. Woracheck, 618 F.2d 1225 (7th Cir. 1980). Jailers are not liable for incarceration of falsely arrested persons. (City Jail, Milwaukee, Wisconsin)

1982

State Supreme Court
FALSE
IMPRISONMENT

Valadez v. City of Des Moines, 324 N.W.2d 475 (Iowa Sup. Ct. 1982). Award of \$3,800 overturned by appellate court. Arrested for hit and run and assault on an officer, Valadez was taken to a hospital shortly after admission to the jail. Upon his return to the jail, he was released on bail. In a jury trial, he was awarded \$300 in damages and \$3,500 in punitive damages for false imprisonment. On appeal, the Iowa Supreme Court reversed the decision and ordered the lower court to rule in favor of the defendants. The supreme court noted that although the plaintiff proved that detention and restraint were against his will, the evidence at the trial failed to prove the unlawfulness of the restraint. (Des Moines Police Department, Iowa)

1983

U.S. Appeals Court
PROBABLE CAUSE

Bernard v. County of Santa Clara, 699 F.2d 1023 (9th Cir. 1983). A probable cause hearing shall be ordered within twenty-four hours of arrest without warrant. In a decision that could affect police, sheriffs, and pretrial release policies throughout California, the United States Court of Appeals for the Ninth Circuit ruled that Santa Clara County must hold a probable cause hearing within twenty-four hours after an arrest without a warrant. The plaintiff had alleged a violation of his right to a prompt determination of probable cause, citing Gerstein v. Pugh, 420 U.S. 103 (1975), which held that the fourth amendment required "as a condition for any significant pretrial restraint on liberty" a fair and reliable determination of probable cause made by a judicial officer "either before or promptly after arrest."

1984

U.S. District Court
FALSE
IMPRISONMENT

Anela v. City of Wildwood, 595 F.Supp. 511 (D. N.J. 1984). Police chief granted summary judgment; court finds qualified immunity against 42 U.S.C.A. 1983 action and immunity under state tort claims act. Pre-hearing detention period constitutional rights were discussed. The two plaintiffs, Connie Anela and Angela DiPietro, were arrested for violating a noise ordinance and were detained overnight by city police. They brought suit in the United States District Court, claiming that the city police chief had violated their due process rights by an unconstitutionally long detention and false imprisonment.

The constitutional right examined by the court was the right that the period of detention following arrest and before the arrestee is brought before a magistrate (for bail setting) be "brief." In Fisher v. Washington Metro Transit Authority, 690 F.2d 1133 (4th Cir. 1982), "brief" was defined as no longer than is necessary for the taking of "administrative steps incident to arrest." As stated by Fisher:

Whether there are any direct constitutional limits on the post-arrest, pre-hearing detention of arrested officers by state officers is a question that has not been much before the federal courts... In a line of Section 1983 cases the former Fifth Circuit has apparently accepted the view that there are no such constitutional limits... But the lower federal courts have simply assumed, though finding no violation on the facts at hand, that independently of any state law requirements there are ultimate durational limits derived from due process guarantees... The Supreme Court has not addressed the issue directly.

Based on this reasoning, the district court granted the defendant's motion for summary judgment in its entirety. (City of Wildwood, New Jersey)

U.S. Appeals Court
FALSE ARREST
FALSE
IMPRISONMENT

Deary v. Three Un-Named Police Officers, 746 F.2d 185 (3rd Cir. 1984). Appeals court remands case for jury trial to determine if probable cause existed for arrest and subsequent detention. The United States Court of Appeals for the Third Circuit has reversed part of a lower court decision, remanding the case to the lower court for further proceedings. The United States District Court for the District of the Virgin Islands had granted summary judgment for the defendants, and the plaintiff appealed.

The plaintiff had been arrested, detained and charged with bank robbery. The arrest was made by three police officers on the basis of a newspaper photograph of the bank robber. Charges were eventually dropped, and the plaintiff sued the three officers, the Department of Public Safety, the F.B.I. and the government of the Virgin Islands.

The court of appeals affirmed the lower court decision which granted summary judgment in favor of all of the defendants except the three officers. The court found that "a genuine issue of material fact existed as to whether arresting officers had probable cause, precluding summary judgment on ground of qualified immunity."

The court noted that even if the police officers lacked probable cause to arrest and detain the plaintiff, they could still avoid liability under 42 U.S.C.A. Section 1983 if they could demonstrate their good faith in so doing See Black v. Stevens, 662 F.2d 181 (3rd Cir. 1981).

The court of appeals noted that remanding the case will address both Section 1983 assertions and common law causes of action. (Virgin Islands)

State Supreme Court
DETENTION IN
POLICE CAR

State v. Williams, 36 CrL 2103 (Wash SupCt, 10/18/84). Washington supreme court rules that detention of suspect in police car while investigating scene not proper. Police officers saw a person attempting to drive away from a house at which a silent burglar alarm had been activated. They stopped the suspect, handcuffed him and placed him in their vehicle while they investigated the residence to determine whether in fact a burglary had taken place. The state supreme court ruled that the detention exceeded permissible boundaries of an investigative stop under Terry v. Ohio, 392 U.S. 1 (1968). As a result, evidence seized from the suspect's car should have been suppressed. While the court approved of the initial encounter with the suspect, they found that the subsequent detention violated the fourth amendment in several respects: (1) the purpose of the stop was unrelated to the suspect's detention; (2) the degree of intrusion was significant considering the nature of the alleged offense; (3) the detention was not related to an investigation which focused on the defendant; and (4) the length of detention appeared to be excessive.

1985

U.S. Supreme Court
DETENTION IN
POLICE CAR

Hayes v. Florida, 105 S.Ct. 1643 (1985). Supreme Court finds that "reasonable suspicion" not enough to detain suspect at police station to obtain fingerprints. Drawing on its 1969 decision in Davis v. Mississippi, 394 U.S. 721, the court concluded that it was improper for a suspect to have been detained to obtain his fingerprints. The police did not have probable cause or a warrant. The five member majority concluded that the "reasonable detention" standard established under Terry v. Ohio should yield to higher standards under the fourth amendment in this kind of case. When a suspect is forcibly removed from his home, transported to a police station, and detained for investigative purposes (even briefly), the court viewed the incident to be sufficiently like an arrest to invoke the traditional rule that arrests may be constitutionally made only on probable cause. (Punta Gorda Police Department, Florida)

State Supreme Court
DETENTION IN
POLICE CAR

State v. Braxton, 37 CrL 2372 (Conn. Sup. Ct. 7/16/85). Connecticut Supreme Court upholds detention of prisoner in police car. A police officer detained an arrestee suspected of participating in a recent armed robbery in his vehicle until other officers arrived. The arrestee alleged that the detention was improper. The state supreme court upheld the action, holding that:

A police officer who has articulable grounds to believe that a crime has been committed and to detain someone...must be permitted to make reasonable use of the resources at his disposal at the site of an investigatory stop. Without immediate access to the assistance of fellow officers, a lone police officer may reasonably need the facilities of his police cruiser for a brief period of time so that he may safely continue to assist in the investigation of the crime without risking the escape of the suspect.

State Supreme Court
ARREST AND
DETENTION

State v. Thornton, 38 CrL 2173 (Mont Sup. Ct. 10/31/85). Montana Supreme Court holds that physical restraint is not a necessary element in arrest and detention. A truck driver was told that he was under arrest by a police officer and secured his release by threatening the officer with violence. He was charged with escape and appealed to the Montana Supreme Court. The court upheld the charge, noting that "official detention" was defined as detention by a peace officer pursuant to arrest. The court noted that an arrest requires the existence of three elements: (1) authority to arrest, (2) assertion of that authority with intention to effect an arrest, and (3) restraint of the arrestee. The court explained that:

The view that a physical restraint is a necessary element of an arrest is largely discredited in recent cases. We agree with this position. Furthermore, we assert that the standard for an arrest when there is not a physical restraint of the defendant is whether a reasonable person, innocent of any crime, would have felt free to walk away under the circumstances. This standard drops any technical requirements for an arrest and the concept of restraint, and instead looks upon all the facts and circumstances of each case.

As a result, the court ruled that a law enforcement officer need not exert actual physical restraint over an individual in order to arrest him for purposes of a state law prohibiting escape from official detention.

U.S. Supreme Court
ARREST AND
DETENTION

United States v. Sharpe, 105 S.Ct. 1568 (1985). Supreme Court upholds twenty minute detention of suspected drug traffickers. Finding that the suspects' evasive actions contributed to the delay about which they complained, the U.S. Supreme Court again reversed a lower court ruling which had reversed the convictions of two drug

traffickers. The lower court had ruled that the twenty minute investigative detention of the defendants violated their fourth amendment rights. The supreme court held that, in assessing whether a detention is too long in duration to be justified as an investigative stop, it is appropriate to examine whether police diligently pursued a means of investigation likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. The high court instructed courts making that assessment to "take care to consider whether police are acting swiftly in a developing situation, and in such cases [the] court should not indulge in unrealistic second-guessing." In this case, where the Drug Enforcement Administration agent diligently pursued his investigation and no delay unnecessary to the investigation was involved, the twenty minute detention of the suspect met the fourth amendment's standard of reasonableness. (Overturms 712 F.2d 65).

1986

State Court
FALSE
IMPRISONMENT

Edmonson v. State, 504 N.Y.S.2d 979 (Ct. Cl. 1986). There is no cause of action for money damages for the segregation of an inmate in a special housing unit one day longer in violation of regulations, ruled the high state court of New York. The action was characterized as one for false imprisonment. The court said even if the suit was instituted under 42 Section 1983, it appeared that money damages cannot be brought against the state of New York, (Queen v. Jordan, 440 U.S. 332, 99 S.Ct. 1139).

The prisoner's rights were vindicated by the dismissal of misconduct charges against him because of the violation of a speedy trial. The trial wasn't held until the eighth day of his confinement instead of the seventh day in violation of regulations. He was timely served with a misbehavior report. (Arthur Kill Correctional Facility, New York)

U.S. District Court
PROBABLE CAUSE
FALSE
IMPRISONMENT

Mabry v. County of Kalamazoo, 626 F.Supp. 912 (W.D. Mich. 1986). An individual detained for over sixty hours over a holiday weekend without a probable cause determination brought an action following his release without charges having been filed. The district court held that: (1) the detention violated the individual's right to probable cause determination after completion of administrative steps incident to arrest; (2) issues of material fact precluded summary judgment against county or arresting officers; and (3) the arresting officer was not entitled to qualified immunity.

The onus is on the arresting officers to ensure that the suspect receives prompt determination of probable cause following a warrantless arrest as the existence of probable cause justifies only arrest and a brief period of detention to take administrative steps incident to the arrest.

The availability of a judicial officer to make a determination of probable cause may be a factor in determining whether officers took a "reasonable" amount of time in completing requisite administrative steps before securing a probable cause determination following a warrantless arrest, particularly in a small town/rural area. However, there is an outside limit to the length of time a suspect can be held without a probable cause determination.

The arresting officer lacked the benefit of qualified immunity for any constitutional violations in a sixty-hour detention of an individual without a probable cause determination following a warrantless arrest, where the conduct violated clearly established law, and the officer had not shown that he neither knew nor should have known of relevant legal standard. (County of Kalamazoo, Michigan)

U.S. Supreme Court
FALSE ARREST

Malley v. Briggs, 106 S.Ct. 1092 (1986). A police officer is not entitled to absolute immunity from a civil rights claim based on an allegedly false arrest even when he makes the arrest pursuant to a warrant which he has sought out. As a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law. If a reasonably well trained officer in the position of the officer in question would have known that his affidavit failed to establish probable cause for the arrest or that he should not have applied for the warrant, then his application for the warrant was not objectively reasonable because it created the unnecessary danger of an unlawful arrest. (State Police, Rhode Island)

U.S. District Court
DUE PROCESS

Olynick v. Taylor County, 643 F.Supp. 1100 (W.D. Wis. 1986). A former prisoner in a county jail brought a civil rights action, claiming that she was a victim of sexual discrimination and was denied due process when she was not allowed to exercise work release privileges during her jail sentence. On cross motions for summary judgment, the district court held that: (1) the plaintiff was denied liberty without due process when she was denied the right to exercise work release privileges because of her transfer to another county jail; (2) the plaintiff's inability to exercise work release privilege outside of county to whose jail she was transferred did not constitute false imprisonment under Wisconsin law; and (3) the sheriff was entitled to qualified immunity because the prisoner's constitutional right to exercise work release privileges was not clearly established.

Changes in condition of confinement, even those with a substantial impact, are not alone enough to invoke due process protections as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him. (Taylor County Jail, Wisconsin)

U.S. District Court
PROBABLE CAUSE

Robinson v. City of Chicago, 638 F.Supp. 186 (N.D.Ill. 1986). A general order of the Chicago Police Department specifically providing that an arrestee's detention be extended beyond the time he would normally be sent before a magistrate so that police officers may continue the investigation violated the fourth amendment. The fourth amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, regardless of whether the original arrest was supported by probable cause. The order permitted police officers to circumvent the requirement and to build a case against the defendant while he was in jail. (Chicago Police Department)

U.S. Appeals Court
PROBABLE CAUSE
INVESTIGATIVE
DETENTION

Thompson v. Olson, 798 F.2d 552 (1st Cir. 1986), cert. denied, 480 U.S. 908. Although a police officer has the discretion to release an arrestee immediately in light of certain postarrest circumstances giving rise to doubts about the initial probable cause finding, he has no absolute duty to do so absent the postarrest discovery of evidence negating, beyond any reasonable doubt, the initial probable cause finding. Accordingly, officers who had probable cause to arrest a blind diabetic when, due to his being in insulin shock, he did not leave a bus, were not liable to conduct a postarrest investigation for the purpose of reassessing the initial probable cause determination. (Portland, Maine)

U.S. District Court
FALSE
IMPRISONMENT

United States v. Deitz, 629 F.Supp. 655 (N.D.N.Y. 1986). The standard for obtaining a stay by the court of appeals of a district court order releasing defendants on bail is the same as the standard for obtaining a preliminary injunction. It was unclear whether the court of appeals applied that standard in staying a district court order because the court did not write an opinion explaining the reason for its stay. Thus, defendants may have been unconstitutionally detained between the time the order was stayed and the time they pleaded guilty. However, even if the defendants were unconstitutionally detained, the district court could not grant the request to compensate them by releasing them before sentencing. The district court had to apply 18 U.S.C.A. Section 3143 providing that a person who is found guilty and awaiting sentence must be detained unless he shows by clear and convincing evidence that he is not likely to flee or pose danger to the community if released. (New York)

1987

U.S. District Court
ARREST AND
DETENTION

Smith v. Gosh, 653 F.Supp. 846 (W.D.Wis. 1987). An arrestee brought a civil rights action against police officers. Although evidence did not support the arrestee's claim of excessive use of force by police officer, the officer was not entitled to award of attorney fees in civil rights action, as the fact that the arrestee was injured, possibly by a blow from police officer, was enough to allow him to bring suit and conduct discovery into officer's state of mind to determine existence of malice. The arrestee's belief that a police officer attempted to keep him in jail in order to hide his injuries from others was sufficient to permit him to bring claim for unreasonable detention against police officer, so that the officer was not entitled to award of attorney fees even though officer prevailed on the merits. (Marshfield Police Department)

1988

U.S. Appeals Court
FALSE ARREST
FALSE
IMPRISONMENT

Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988). An arrestee, who was mistakenly identified as an individual for whom there was an outstanding warrant, brought a Section 1983 suit alleging false arrest and imprisonment. The U.S. District Court dismissed all defendants except the county sheriff in his official capacity and then issued a directed verdict in the county sheriff's favor, and the plaintiff appealed. The appeals court, affirming in part, reversing in part and remanding, found that the jury question was presented as to whether the time involved in processing the release of the arrestee was reasonable. The sheriff, in his individual capacity, and the assistant supervisor of court services for the sheriff's department were entitled to qualified immunity from the suit arising from the failure to release the misidentified arrestee for 11 hours after the issue of his identification was first raised in court, where case law at the time of the defendant's arrest was not well-established, but merely suggested that some pre-release identification procedures could be so time-consuming as to violate the fourth amendment. The court did not have jurisdiction to review the lower court's decertification of class. (Cook County Department of Corrections, Illinois)

U.S. District Court
ARREST AND
DETENTION
FALSE ARREST

Andujar v. City of Boston, 760 F.Supp. 238 (D. Mass. 1991). A person arrested based on mistaken identity brought a Section 1983 action against an individual police officer and a city. On the city's motion to dismiss, the U.S. District Court found that the allegations that the claimant was arrested and detained for 12 days based upon misidentification that the warrant on which the claimant was arrested was three years old, and that the defendant was arrested a second time on the same warrant and detained for four and one-half hours, were sufficient to state a Section 1983 action against the municipality based on inadequate police training and a policy of failing to properly investigate the identification of individuals. The claimant, however, failed to state a cause of action against the city for violation of a state civil rights law; the allegation of the city's failure to train officers did not involve "threats, intimidation or coercion" required to state a violation of state law. (Boston, Massachusetts)

U.S. Appeals Court
ARREST AND
DETENTION
DUE PROCESS

Austin v. Hamilton, 945 F.2d 1155 (10th Cir. 1991). Arrestees brought an action alleging that excessive force was used during arrest and subsequent detention, and that the arrestees were detained following a warrantless arrest for an unreasonably extended duration without a probable cause determination by a judicial officer. The U.S. District Court denied the agents' motion for summary judgment, and one agent appealed. The court of appeals found that a reasonable officer, under either the Fourth Amendment or substantive due process standard, could not have believed that the manner of the arrest and detention was constitutionally permissible; therefore the district court properly denied summary judgment on qualified immunity grounds. The Fourth Amendment protections imposed restrictions on the treatment of arrestees detained without a warrant. The substantive due process principles controlled the issue as to any excessive force employed after an arrest, where the Fourth Amendment law currently recognized as controlling up until the arrested suspect's first judicial hearing was not, at the time of the arrest, established with clarity. A genuine issue of material fact precluding judgment, existed as to whether the warrantless detention was unreasonably prolonged in violation of the Fourth Amendment principles. The court of appeals noted that, under the circumstances of this case, in which the specific facts are unsettled and disputed regarding both the length and the reasons for the delay, the district court's denial of summary judgment was proper. (U.S. Customs, U.S. Immigration)

U.S. District Court
ARREST AND
DETENTION
FALSE ARREST

McDonald v. Dunning, 760 F.Supp. 1156 (E.D. Va. 1991). A plaintiff brought a Section 1983 suit against a sheriff and clerk of court, arising from his mistaken arrest and jailing for failure to appear to serve a sentence that he had in fact already served. On the defendants' motions for summary judgment, the district court found that evidence was insufficient to show that the clerk of court was responsible for any violation of the plaintiff's federal constitutional or statutory rights. The suit could not proceed against the sheriff in his individual capacity, in absence of any evidence of the sheriff's personal involvement in the alleged violations, but evidence raised disputed factual issues whether alleged constitutional violations resulted from a policy of the sheriff's or from a custom of which the sheriff was actually or constructively aware, precluding summary judgment on the issue whether the sheriff was liable in his official capacity. (Alexandria Detention Center, Virginia)

U.S. Appeals Court
ARREST AND
DETENTION
FALSE
IMPRISONMENT

Rivas v. Freeman, 940 F.2d 1491 (11th Cir. 1991). A detainee brought a civil rights action against a sheriff, deputies, and other officials, for an arrest and incarceration resulting from his misidentification as probationer. The U.S. District Court awarded the detainee \$100,000 in compensatory damages, holding all officials liable jointly and severally. All officials settled the case except the sheriff and deputies, who appealed. The court of appeals found that qualified immunity was not available to the sheriff and deputies being sued in their official capacities for violating the detainee's constitutional rights. In addition, the detainee's civil rights action against the sheriff and deputies in their official capacities, was not barred by the Eleventh Amendment as the sheriff and deputies were county officials and funds used to satisfy assessments of liability against them would not be paid from Florida's treasury. It was further found that the sheriff's failure to train his officers adequately regarding reliable techniques for identifying arrestees, along with his failure to account for incarcerated suspects, subjected the sheriff to liability for violation of the civil rights of the detainee, who was misidentified as probationer and was unnecessarily detained for six days for an alleged probation violation, where there was evidence that the sheriff knew of prior instances of mistaken identity, but failed to establish appropriate policies and continued to allow his deputies to detain persons even when discrepancies existed. However, the deputies' arrest and detention of the detainee, despite having information demonstrating that the detainee's identity was different from that of the probationer thought to be violating probation, did not amount to gross negligence or deliberate indifference to the detainee's constitutional rights, as was necessary for the deputies to be liable under Section 1983. The deputies' actions flowed from lack of policies, procedures, and training, and amounted at most to simple negligence. (Florida)

U.S. District Court
FALSE
IMPRISONMENT

Weber v. Village of Hanover Park, 768 F.Supp. 630 (N.D. Ill. 1991). Arrestees, who were allegedly beaten by an arresting officer while other officers watched, sued the village, arresting officer, and police commander. The defendants moved to dismiss. The district court found that one arrestee stated a Section 1983 claim against the arresting officer for false imprisonment, as violations alleged by the arrestee were substantive, and not merely procedural. The arrestee alleged that his constitutional right to be free of an unlawful search and seizure under the Fourth and Fourteenth Amendments was violated by his arrest, and that, as a direct and proximate result of that arrest, he was falsely imprisoned at the village police station. (Village of Hanover Park Police Station, Illinois)

1993

U.S. Appeals Court
ARREST AND
DETENTION

Hallstrom v. City of Garden City, 991 F.2d 1473 (9th Cir. 1993). An arrestee brought a Section 1983 action against a county and its officials. The U.S. District Court dismissed the action, and the arrestee appealed. The appeals court found that a four-day incarceration period between arrest and presentation to a magistrate violated the arrestee's right to prompt presentation, for the purposes of her Section 1983 action. The county made no showing of justification for the delay other than as a measure to force her to cooperate with booking procedures. The refusal to cooperate with booking procedures did not excuse the extended detention. The court noted that the county and its officials were not entitled to qualified immunity from either official or personal liability under Section 1983 for violating the arrestee's right to be taken before a magistrate promptly, as no objectively reasonable officer could consider a four-day incarceration to be brief, arraignment to be prompt, or the purpose of coercing compliance with booking procedures to be sufficiently exigent to justify the delay. (Ada County Jail, Idaho)

U.S. District Court
ARREST AND
DETENTION
FALSE ARREST

Rodriguez v. U.S., 847 F.Supp. 231 (D.Puerto Rico 1993). An arrestee sued the government pursuant to the Federal Tort Claims Act for false arrest after she was held overnight before being brought to a magistrate. The arrestee was released the following day when additional identification material convinced authorities that she was not the subject of an arrest warrant from New York. The district court found that the defendant officers' failure to wait for the arrival of photographs or fingerprint evidence before conducting the arrest did not make the arrest illegal. In addition, the failure to bring the arrestee before a magistrate until the morning following her arrest was not proof of failure to bring the arrestee before a magistrate without undue delay. The arrestee did not show any statute, regulation or rule in effect at the relevant time that would have required a magistrate to see her immediately after the arrest. (Hogar Crea, Quisqueya Detention Facility, Puerto Rico)

U.S. District Court
FALSE ARREST

Ruehman v. Village of Palos Park, 842 F.Supp. 1043 (N.D.Ill. 1993) affirmed 34 F.3d 525. Arrestees brought sued a sheriff and cities. The district court found that the failure to use feasible methods to validate arrest records may be deliberate indifference to the rights of those arrested pursuant to recalled warrants. (Cook County, Illinois)

U.S. District Court
FALSE ARREST
FALSE
IMPRISONMENT

Selep v. City of Chicago, 842 F.Supp. 1068 (N.D.Ill. 1993). An arrestee brought a civil rights action against a police officer and other named defendants, alleging false arrest and false imprisonment. On the defendants' motion to dismiss, the district court found that the arrestee's allegation that a police officer and an unknown officer went into another room to speak with other defendants who allegedly wrongfully accused her of a crime, before arresting her without a warrant, was sufficient to state a claim against the named officer for conspiracy to violate the arrestee's constitutional rights. The claim based on the alleged false imprisonment was not duplicative of a claim based on alleged false arrest. In addition, the detention of the arrestee for only four hours could support a civil rights claim based on alleged false imprisonment. (Chicago Police Department, Illinois)

1994

U.S. Appeals Court
FALSE ARREST
PROBABLE CAUSE

Hirsch v. Burke, 40 F.3d 900 (7th Cir. 1994). A wife, as the administratrix of the estate of her husband, brought a civil rights action under Section 1983 against a police officer and a county sheriff. The U.S. District Court dismissed the claims and entered judgment in favor of the defendants. On appeal, the court of appeals, affirming the decision found that the police officer had probable cause to arrest the individual for public intoxication, even though the individual was, in fact, a diabetic in a state of insulin shock. The individual had trouble balancing himself and appeared incoherent, smelled of alcohol and had bloodshot eyes, was unable to state his name or date of birth, and did not indicate that he was a diabetic. In addition, the municipality was not liable under Section 1983 based on a "failure to train" theory for alleged violation of the individual's civil rights which occurred when the police officer arrested and jailed the individual. There was no evidence that the municipality engaged in a pattern of mistakenly detaining people with symptoms of diabetic shock or a pattern of failing to medically treat those same individuals when their true affliction was discovered. (Marion County Jail, Indiana)

U.S. District Court
FALSE ARREST

Hvorcik v. Sheahan, 847 F.Supp. 1414 (N.D.Ill. 1994). A class action suit was brought against a sheriff in his official capacity charging the sheriff with illegal custodial detention, false arrest under state law, and civil contempt of court for alleged failure of the sheriff to maintain accurate records of traffic warrants. The district court found that the sheriff's policy of not maintaining accurate records of traffic warrants was deliberately indifferent to the constitutional rights of persons being subjected to arrests and detention on recalled warrants. The sheriff's policy of not maintaining accurate records of traffic warrants was not the proximate cause of the unlawful arrests of the named plaintiffs, and thus the municipality was not liable for a Section 1983 violation as to the named plaintiffs. However, the sheriff's policy was the proximate cause of the unlawful arrests of the class of plaintiffs, and thus the municipality was liable for Section 1983 violations as to the class. The court also found that the sheriff's policy, although willful and wanton, was not the proximate cause of the unlawful arrests of named plaintiffs, and thus the municipality was not liable for false imprisonment as to named plaintiffs, but the municipality was liable for false imprisonment as to the class of plaintiffs. The sheriff was not entitled to absolute immunity from the suit under the Eleventh Amendment. (Cook County Sheriff's Office, Illinois)

U.S. District Court
FALSE ARREST

Jackson v. Doria, 851 F.Supp. 288 (N.D.Ill. 1994). An arrestee who was repeatedly arrested under a warrant issued for another person brought a Section 1983 action against a county sheriff claiming violations of the Fourth and Fourteenth Amendments. The county sheriff moved to dismiss for failure to state a claim. The district court denied the motion to dismiss, finding that the county sheriff did not act as a state official in executing the arrest warrant issued by the state court and was not entitled to Eleventh Amendment immunity. The court found that the arrestee stated a cause of action against the county sheriff based on his failure to correct the erroneous information contained in the arrest warrant. (DuPage County Sheriff's Office, Illinois)

U.S. Appeals Court
PROBABLE CAUSE

Stigall v. Madden, 26 F.3d 867 (8th Cir. 1994). A pretrial detainee brought a Section 1983 action alleging he was arrested without probable cause. The U.S. District Court ruled for the defendants and the detainee appealed. The appeals court, affirming the decision, found that the officer's reliance on an arrest warrant was reasonable. The information on which the officer acted was not inherently unreliable nor obviously less credible than evidence opposed to it, and the officer was therefore shielded from Section 1983 liability for reliance on the warrant. (Monroe County Jail, Arkansas)

1995

U.S. District Court
FALSE
IMPRISONMENT

Lewis v. Houston County Jail, 876 F.Supp. 861 (E.D. Tex. 1995). A prisoner brought a civil rights action arising out of his detention in a county jail and a claim of false imprisonment. The district court found that the civil rights claimant failed to establish that his allegedly false arrest had been illegal where evidence showed the existence of a facially valid arrest warrant. (Houston County Jail, Texas)

U.S. Appeals Court
FALSE
IMPRISONMENT

Pinaud v. County of Suffolk, 52 F.3d 1139 (2nd Cir. 1995). An arrestee brought a Section 1983 action against current and former district attorneys, alleging a violation of his civil rights in connection with his prior criminal prosecution. The U.S. District Court dismissed the action and the arrestee appealed. The appeals court found that since the handling of the prisoner after the complete conclusion of all criminal charges was not a prosecutorial task, but rather an administrative one, district attorneys who allegedly kept the prisoner in state custody for three weeks after the dismissal of all state charges against him were not entitled to absolute prosecutorial immunity for purposes of the prisoner's Section 1983 action, but rather were entitled only to the protection of qualified immunity for any involvement in the prisoner's seemingly delayed transfer back into federal custody after the dismissal of the state charges. (Suffolk County Jail, New York)

1996

U.S. District Court
FALSE IMPRISON-
MENT

Harrell v. Sheahan, 937 F.Supp. 754 (N.D.Ill. 1996). A prisoner brought a false imprisonment and § 1983 action against a county sheriff alleging violation of his due process and Eighth Amendment rights. The district court granted summary judgment to the sheriff, finding that the prisoner's erroneous detention did not violate the due process clause where state remedies were available. The prisoner had asserted that he was entitled to "day for day" good time credits under the terms of his sentence and that the sheriff failed to release him in a timely manner. The prisoner had alleged that the county prison policy of inadequately training its employees to interpret court orders resulted in their failure to award him good time credit. After the date that the prisoner asserted he was entitled to be released, he was attacked by other prisoners. The court found that the sheriff was not liable in his official capacity under the Eighth Amendment despite the prisoner's allegation that the county prison had a policy of providing inadequate patrols. (Cook County Department of Corrections, Illinois)

1997

U.S. District Court
FALSE ARREST

Astrada v. Howard, 979 F.Supp. 90 (D.Conn. 1997). After the plaintiff had burst into a police station, banged frantically on a desk window and brandished a smoking pistol, four individuals arrived at the station and claimed that the plaintiff fired his pistol at them. The plaintiff was held in a room in the station while police attempted to sort out the events. The plaintiff was eventually arrested and charged with reckless endangerment, but after a year the charge was nolle. The plaintiff sued police officials under § 1981 and § 1983 claiming intentional infliction of emotional distress, false arrest and racial discrimination. The district court held that the plaintiff failed to show a causal link between race and the alleged discriminatory actions. The court found that detaining the plaintiff in an allegedly "scummy" room at the police station did not amount to arrest without a showing of probable cause because the detention was no more intrusive than was necessary. (West Haven Police Department, Connecticut)

U.S. Appeals Court
FALSE ARREST
FALSE IMPRISON-
MENT

Dean v. Olibas, 129 F.3d 1001 (8th Cir. 1997). An arrestee brought a state court action against a bail bondsman and the case was removed to federal district court. The district court entered judgment in favor of the arrestee and awarded \$5,000 in compensatory damages and \$70,000 in punitive damages. The district court also awarded nearly \$20,000 in attorney fees and costs. The appeals court affirmed in part and reversed in part, finding that the bail bondsman was not liable for false imprisonment but that the full compensatory damages award was proper and the punitive damages award did not violate due process. The bondsman had posted a bond in Texas for a man claiming to be the plaintiff, but later learned that the man was probably the plaintiff's brother. The bondsman had the plaintiff arrested and detained in Arkansas but he was released when the warrant was dismissed. (Texas and Arkansas)

U.S. District Court
DUE PROCESS
RELEASE

Puccini v. U.S., 978 F.Supp. 760 (N.D.Ill. 1997). A former inmate brought a Bivens action against federal prison officials alleging false imprisonment. The district court found that the individual defendants were entitled to qualified immunity and granted them summary judgment. The court also held that the former inmate could not maintain an action under the Federal Tort Claims Act because she did not complain of actions that were investigative or involved law enforcement officers. The court held that the former inmate's due process rights were not violated when she was held in federal custody after the expiration of her state sentence even though her federal sentence had also expired; the inmate had filed a petition and was released. The former inmate sought damages for the 147 days she spent in federal custody after both her state and federal sentences had expired. (Federal Bureau of Prisons)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Thompson v. City of Galveston, 979 F.Supp. 504 (S.D.Tex. 1997). A mother on her own behalf and on behalf of her minor son, brought a civil rights action challenging her arrest and the taking into custody of her son. The district court dismissed with prejudice her claims for false arrest, false imprisonment, and malicious prosecution. According to the court, because the mother pled nolo contendere to the charges surrounding her arrest, imprisonment and prosecution, she was barred from bringing any claims relating to her conviction unless she could prove that the conviction or sentence had been reversed on direct appeal, expunged by direct order, or otherwise declared invalid. The court found that her false arrest claim in connection with taking her minor son into custody had failed because his mother was arrested for contributing to the delinquency of another child and where the child was not arrested and the officers were authorized to take the child into custody. Police had arrested the mother on an arrest warrant on the charge of contributing to the delinquency of a minor. When she was arrested, her 10-year-old son was taken into custody at the same time and taken to a juvenile detention center. (Galveston Police Dept.)

1998

U.S. District Court
FALSE IMPRISON-
MENT
PROBABLE CAUSE

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

U.S. District Court
FALSE IMPRISON-
MENT

Cozine v. Crabtree, 15 F.Supp.2d 997 (D.Or. 1998). A prisoner who was held in a federal prison after California released him petitioned for a writ of habeas corpus. The California court had indicated that his state sentence was to be served concurrently with a

prior federal conviction. The district court granted the petition, finding that the federal sentence began to run on the date that the federal Bureau of Prisons improperly refused to accept custody from California authorities. The court found that under California law, a defendant who is sentenced to a term to run concurrently with a preexisting foreign sentence is entitled to be transferred to the foreign authorities and to have a foreign prison designated as the place of service for the California sentence. The court determined that the inmate was entitled to release. The court also held that the defendant's term of supervised release which was imposed as part of his sentence for a federal conviction was tolled during his period of incarceration, during which the federal sentence of incarceration ran consecutively. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Cronn v. Buffington, 150 F.3d 538 (5th Cir. 1998). A parolee brought a Bivens action against probation and parole officials and others. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the parolee's claim for damages for illegal confinement was cognizable given the grant of the parolee's habeas petition. The appeals court held that although the habeas court determined that the absence of a parole revocation hearing following the execution of the parole-violator's warrant unlawfully deprived the parolee of his due process right, the parole officials were entitled to qualified immunity. (U.S. Parole Commission)

U.S. District Court
FALSE IMPRISON-
MENT

Douglas v. Murphy, 6 F.Supp.2d 430 (E.D.Pa. 1998). A state prisoner filed a § 1983 action alleging that prison officials and a social worker violated his constitutional rights by detaining him for four months and seventeen days past his maximum sentence date. The district court granted summary judgment for the defendants, finding that the prison warden and social worker were not liable absent evidence that they were aware that the prisoner was disputing his incarceration. The court also held that the other prison official, who had instructed his office to investigate the prisoner's status once he became aware of the prisoner's disputes as to his sentence, was not deliberately indifferent to the prisoner's plight. (SCI Graterford, Pennsylvania)

U.S. District Court
FALSE IMPRISON-
MENT
FALSE ARREST

Duffy v. County of Bucks, 7 F.Supp.2d 569 (E.D.Pa. 1998). An individual who had been arrested and detained over a weekend brought a § 1983 action against the probation officer who had sought the warrant under which he was arrested, and various county officials. The district court held that the arrest and detention of the probationer pursuant to a facially valid warrant did not violate his substantive due process rights, even though the individual had informed officials that the warrant was actually for a different person who had the same name. The court found that the officials did not have a duty to take every step to eliminate the possibility that they were holding an innocent person, and that they had no authority to ignore a bench warrant. The court also held that the individual's detention over a weekend did not violate his procedural due process rights. The court held that the probation officer was not entitled to qualified immunity because a reasonable probation officer could not have believed that his actions did not violate the individual's substantive due process rights. (Bucks County, Pennsylvania)

U.S. District Court
FALSE ARREST

Farabee v. Rider, 995 F.Supp. 1398 (M.D.Fla. 1998). An arrestee sued a county sheriff and deputies alleging negligence and malicious prosecution. The district court found that the sheriff owed a duty to protect the arrestee from the risk of use of excessive force created by his alleged failure to train and supervise deputies. The court held that the sheriff was not entitled to qualified immunity. The arrestee was pushed to the ground and handcuffed while a deputy put his knee in her back. She was transported to the county jail where she was incarcerated for at least 12 hours and she was suffering from back and arm injuries inflicted by the deputy while confined. (Glades County Jail, Florida)

U.S. District Court
FALSE IMPRISON-
MENT
FALSE ARREST

Hinton v. Moritz, 11 F.Supp.2d 272 (W.D.N.Y. 1998). A prisoner sued officials in two states for actions arising from his arrest and extradition, moving to proceed in forma pauperis. The district court dismissed the petition, finding that the prisoner's claims of false arrest and false imprisonment were barred. The court held that the prisoner was not entitled to relief on his § 1983 claim that he was extradited in violation of his due process rights where the prisoner had executed a presigned waiver of extradition as a condition of his parole. (Erie County Correctional Facility, New York)

U.S. District Court
FALSE IMPRISON-
MENT

Jackson v. New York Dept. of Correctional Services, 994 F.Supp. 219 (S.D.N.Y. 1998). A prison inmate who had been placed in keeplock for 13 days and then transferred to another prison brought a § 1983 action against prison officials. The district court granted summary judgment for the defendants, finding that the inmate's placement and transfer did not implicate any protected liberty interest. The court also held that the inmate could not recover for false imprisonment for his 13 days in keeplock, where he was placed for legitimate purposes. The prison attempted to hold a hearing on the disciplinary charges but was unable to because the inmate was transferred. The inmate was placed in keeplock as the result of a misbehavior report, which the inmate had claimed was falsified. The inmate was transferred to avoid a conflict with

another inmate who was transferred to the prison, with whom he had a previous altercation. The court found that the accidental placement of the second inmate, who was regarded by prison officials as an "enemy" of the plaintiff, in the same prison was not the result of deliberate indifference. The transfer of the plaintiff, instead of the second inmate, was supported by the fact that the second inmate had at least ten enemies throughout the prison system and it would have been more difficult to transfer him. (Green Haven Correctional Facility, New York)

U.S. District Court
FALSE IMPRISON-
MENT

Lucas v. Parish of Jefferson, 999 F.Supp. 839 (E.D.La. 1998). A civil rights suit was filed by several offenders who had completed terms of probation but who had been arrested and incarcerated when an assistant district attorney filed motions to revoke probation after their terms had expired. The district court held that a Louisiana prosecutor is entitled only to qualified immunity rather than absolute immunity for his actions in seeking to revoke probation because he is performing the function of a probation officer. According to the court, an attempt to revoke probation after the probationary term had expired violated the clearly established rights of the offenders, of which the prosecutor should have known, so that the prosecutor was not entitled to qualified immunity. The plaintiffs had alleged false imprisonment and malicious prosecution. (Jefferson Parish, Louisiana)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Martinez v. City of Los Angeles, 141 F.3d 1373 (9th Cir. 1998). A defendant who was arrested in Mexico at the request of a U.S. police department sued a city and police officials. The district court granted summary judgment for the defendants, but the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that material fact issues precluded summary judgment on the plaintiff's false imprisonment and negligence claims based on his prolonged detention. The court held that under California law, a jailer and the public entity that employs a jailer may be liable for false imprisonment if the jailer knows that imprisonment is unlawful or if there is some notice sufficient to put him, as a reasonable man, under a duty to investigate the validity of incarceration. Los Angeles police had asked Mexican authorities to arrest a murder suspect. The plaintiff was arrested, but was innocent and was nevertheless held in a Mexican prison for 59 days. Ten days after his arrest and detention, the plaintiff's lawyer sent a letter to a Los Angeles detective telling him that the Mexican authorities had arrested the wrong man, providing information that challenged the validity of the arrest, but the two witnesses to the Los Angeles murder were never given the opportunity to identify the plaintiff at the prison or to view a picture of him. The plaintiff was eventually released when the true suspect was identified. (Los Angeles Police Department)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Mistretta v. Prokesch, 5 F.Supp.2d 128 (E.D.N.Y. 1998). An arrestee sued a county, arresting officer and jail officials under § 1983 alleging false arrest and false imprisonment. The district court granted judgment as a matter of law in favor of the defendants at the close of the arrestee's case. The court found that the jail officials' decision to condition the release of this arrestee on his agreement to stay away from his residence for 24 hours was reasonable and did not give rise to a false arrest claim. The court also found that the county's "pro-arrest" policy relating to domestic disputes did not violate the Fourth Amendment. (Suffolk County Police Department, New York)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Neal v. City of Harvey, Ill., 1 F.Supp.2d 849 (N.D.Ill. 1998). An arrestee brought a § 1983 action against a city and police officials. The district court held that probable cause of the arrestee's attempted murder arrest barred his claims for false arrest, false imprisonment and malicious prosecution. (City of Harvey, Illinois)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Ramirez v. U.S., 998 F.Supp. 425 (D.N.J. 1998). A person who was arrested and imprisoned pursuant to an arrest warrant issued for a different individual with a similar name, brought an action against the United States, the Immigration and Naturalization Service (INS), and various federal and county officials. The court held that the INS and its agents were immune from claims under the Federal Tort Claims Act (FTCA) but the United States was not immune. The court found that the alleged conduct stated claims against the county and county officials. The court noted that under New Jersey law, punitive damages may be awarded in a false imprisonment case even where there are no compensatory damages. (Hudson County, New Jersey)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Ringuette v. City of Fall River, 146 F.3d 1 (1st Cir. 1998). A person who was injured while in protective custody as the result of apparent intoxication brought a § 1983 action against a city and police officers. The district court granted qualified immunity for the defendants, and the appeals court affirmed. The appeals court held that under the circumstances, including the plaintiff's refusal of offers to let him leave, the officers had qualified immunity for detaining the plaintiff in protective custody beyond the 12 hours permitted by statute. The court found that the while further confinement of the plaintiff beyond the 12-hour limit could be called an unreasonable seizure, the unreasonableness was mitigated by the belief that the plaintiff remained incapacitated and the implicit willingness to let the plaintiff go whenever he said he was ready. (City of Fall River, Massachusetts)

U.S. Appeals Court
FALSE IMPRISON-
MENT
FALSE ARREST

Wilson v. Lawrence County, Mo., 154 F.3d 757 (8th Cir. 1998). A pardoned former inmate sued a county and law enforcement officials asserting state tort law claims and civil rights claims for wrongful arrest and incarceration. The district court declined to exercise supplemental jurisdiction over the state claims and granted summary judgment for the defendants on the civil rights claim. The appeals court reversed the grant of summary judgment, reinstated the state law claims, and remanded the case, finding that the inmate's conviction was invalidated and "expunged by executive order" for § 1983 claim purposes. According to the appeals court, the pardon "obliterated" the inmate's conviction. After nine years in the prison, the governor pardoned the inmate, finding that "it is clear he did not commit the crime for which he had been incarcerated." After his release, the inmate filed this action against Lawrence County and unnamed law enforcement officials alleging that they conducted a "biased investigation by intimidating and coercing witnesses" and "provided information, knowing it was false and/or misleading or in reckless disregard for the truth." (Lawrence County, Missouri)

1999

U.S. Appeals Court
FALSE
IMPRISONMENT
FALSE ARRST

Anaya v. Crossroads Managed Care Systems, Inc., 195 F.3d 584 (10th Cir. 1999). Detainees who were seized by police, transported to an alcohol detoxification facility and then detained, brought a § 1983 action against the operator of the facility and government officials alleging violation of their Fourth Amendment rights. The detainees had been seized from their front porches, from their bedrooms and from the back seats of their cars under a policy of the City of Trinidad. The district court granted summary judgment for the defendants and the detainees appealed. The appeals court reversed and remanded. The appeals court found that the seizures set the standard for detention well below the requirements of the Fourth Amendment and that the government officials were not entitled to qualified immunity because the right against unreasonable seizures for potential drunkenness was clearly established at the time of the seizures. (City of Trinidad, Colorado)

U.S. District Court
FALSE ARREST

Chimurenga v. City of New York, 45 F.Supp.2d 337 (S.D.N.Y. 1999). A visitor to a juvenile detention facility filed a § 1983 and state law action against a city and corrections officials for false arrest, negligence and violation of her equal protection and due process rights following her arrest for allegedly attempting to smuggle contraband. The court granted summary judgment to the defendants in part and denied in part. The court held that the equal protection rights of the visitor were not violated and that an attorney did not have a liberty interest in access to a pass that would allow her to visit detainees in a juvenile detention facility, where there was no law or regulation that limited the discretion of the state corrections department to grant or deny a pass. But the court found that summary judgment was precluded by fact questions regarding whether correction officers planted a razor blade in a box brought by the visitor. (Adolescent Reception and Detention Center, Rikers Island, New York)

U.S. Appeals Court
FALSE IMPRISONMENT

Estate of Brooks Ex Rel. Brooks v. U.S., 197 F.3d 1245 (9th Cir. 1999). A federal detainee who was held by a county in pretrial detention for 12 days without being arraigned or brought before a federal judicial officer brought a § 1983 action. The detainee reached a settlement with the United States and the charges against other defendants were dismissed. The appeals court affirmed, holding that the county's actions were not the legal cause of the detainee's injuries and the county was not liable for false imprisonment under state law. The court noted that the county was not authorized to act for the United States and bring the detainee before a federal magistrate, nor could it release the detainee without violating a state law. (United States Marshals Service and Alameda County, California)

U.S. District Court
FALSE IMPRISON.

Hardy v. Town of Hayneville, 50 F.Supp.2d 1176 (M.D.Ala. 1999). An arrestee brought a § 1983 suit against an arresting officer, chief of police, mayor and town, alleging false imprisonment and use of excessive force. The court found that the arrestee's allegations that the police officer arrested him and detained him in a county jail without informing him of the nature and cause of the accusations against him were sufficient to state a Sixth Amendment claim. The court also found that allegations that the police chief and town failed to provide police officers with adequate training on the lawful use of force, and that the unlawful use of force would be condoned by their superiors, were sufficient to state a Fourth Amendment claim. The arrestee had been preaching the gospel and greeting people as they came into a store, with the permission of the owner. A police officer instructed the arrestee to leave the store and then allegedly followed the arrestee to the back of the store when he attempted to protest to the owner. The officer allegedly assaulted the arrestee and battered him about the head and back, threw him to the ground and struck his wrists repeatedly with unopened handcuffs. (Town of Hayneville, Alabama)

U.S. Appeals Court
PROBABLE CAUSE
FALSE IMPRISON-
MENT

Luck v. Rovenstine, 168 F.3d 323 (7th Cir. 1999). An arrestee who was jailed for a week without a probable cause hearing following his warrantless arrest brought a § 1983 action against a sheriff in his personal and official capacities. The district court granted summary judgment in favor of the sheriff. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the sheriff could not be held liable in his individual capacity. Fact issues as to whether the arrestee's detention without a probable cause

hearing resulted from the sheriff's deliberate decision not to monitor detainees who were brought to the jail by outside agencies precluded summary judgment on the official capacity claim. According to the court, the sheriff, as the custodian of persons incarcerated in the county jail, had a duty to ensure that detainees arrested without warrants received probable cause hearings or gained release. The court noted that according to the Supreme Court, "prompt" in this context means, under most circumstances, within 48 hours. (Kosciusko County Jail, Indiana)

U.S. Appeals Court
FALSE ARREST
FALSE IMPRISON-
MENT

Qian v. Kautz, 168 F.3d 949 (7th Cir. 1999). An arrestee brought a civil rights action alleging arrest without probable cause, and wrongful denial of adequate medical treatment. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part, and reversed and remanded in part. According to the court, "when the events leading to this lawsuit began to unfold, ambiguous behavior combined with a severe language barrier led to the arrest" of the plaintiff. After his initial arrest, police determined that he could be released, but "because he did not want to pay for a hotel room, they then re-arrested him, consigned him to the drunk tank, and failed to recognize that he was suffering from a serious medical condition." The sheriff's department translator spoke the wrong Chinese dialect, making communication very difficult. The appeals court held that summary judgment on the wrongful arrest claim was precluded by fact questions as to whether a second arrest, without probable cause, occurred when the arrestee refused to book a room at a hotel and a police officer took him back into custody and brought him to a local jail. The court held that while the initial arrest for driving while intoxicated was supported by probable cause, whether the police officer actually took the arrestee into "protective custody" for his own safety rather than arresting him was an issue of fact precluding summary judgment. The court noted that state law permits an officer to take into custody someone who appears to be mentally ill and who may present a danger to himself or others, but such involuntary incarcerations must meet requirements that include a medical assessment of the detainee's condition and approval by a judge. The appeals court affirmed summary judgment for the defendants on the medical care claim, noting that absent evidence that county sheriffs' officials actually knew of the arrestee's medical condition, they could not be held liable. (LaPorte County Jail, Indiana)

U.S. District Court
FALSE
IMPRISONMENT

Sampson v. City of Xenia, 108 F.Supp.2d 821 (S.D. Ohio 1999). A suspect who was mistakenly confined in a county jail for three months after all charges were dropped against him sued city officials in state court and under § 1983 in federal court. The federal district court held that a municipal court clerk was entitled to absolute quasi-judicial immunity from liability for her handling of the entry dismissing all charges against the suspect. (Greene County Jail, Ohio)

U.S. District Court
PRISON WORK
STOPPAGE

Turner v. Johnson, 46 F.Supp.2d 655 (S.D. Tex. 1999). A state prisoner petitioned for habeas corpus relief challenging the outcome of three prison disciplinary hearings. The district court denied the petition. The court held that a prisoner has no constitutional right to organize a prison work shutdown or to circulate a petition facilitating such an action. The prisoner's own admissions and copies of the work stoppage materials were more than adequate, according to the court, to sustain the conclusions of hearing officers that the prisoner was guilty of disciplinary offenses for attempting to organize a prison work shutdown. (Wynne Unit, Walker County, Texas)

2000

U.S. Appeals Court
FALSE
IMPRISONMENT

Dry v. U.S., 235 F.3d 1249 (10th Cir. 2000). Members of an Indian tribe brought a § 1983 and Federal Tort Claims Act against tribal law enforcement officers who allegedly committed torts when arresting them. The district court dismissed the claims and the appeals court affirmed. The appeals court held that city jailers did not violate the constitutional rights of tribal members by detaining them, in accordance with cross-deputization agreements with the tribe, based on the representations of tribal law enforcement officers that offenses had been committed. The court noted that the jailers had no constitutional duty to question the tribal officers as to their probable cause for arrest, to verify the validity of the grounds for detention under tribal law, or to conduct an independent constitutional or historical analysis to determine whether the tribe's assertion of jurisdiction over the detainees was legitimate. (City of Talihina and City of Clayton, Oklahoma)

U.S. Appeals Court
FALSE
IMPRISONMENT

Jones v. City of Jackson, 203 F.3d 875 (5th Cir. 2000). A detainee sued a sheriff and deputy alleging they violated state laws by detaining him. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that, under Mississippi law, if a prisoner from one county is housed in a different county due to overcrowding, the former remains responsible for the prisoner's custody. The appeals court found that the sheriff and deputy were not entitled to qualified immunity for the alleged nine month detention of the detainee without proper process protections. But the appeals court found that the sheriff and deputy were entitled to sovereign immunity against the detainee's claim that they violated Mississippi law by detaining him, where they were acting within the scope and course of their employment. (Jackson City Jail, Mississippi)

U.S. District Court
FALSE
IMPRISONMENT

Maurello v. U.S., 111 F.Supp.2d 475 (D.N.J. 2000). A prisoner brought a Federal Tort Claims Act action alleging that the federal Bureau of Prisons negligently delayed enrolling him in a statutory drug treatment program and caused his release to be delayed by 51 days. The district court granted summary judgment for the Bureau, finding that the delay was within the Act's false imprisonment exception. (Federal Bureau of Prisons)

U.S. Appeals Court
FALSE
IMPRISONMENT

Miller v. Kennebec County, 219 F.3d 8 (1st Cir. 2000). An arrestee brought a § 1983 action against an arresting officer, town, counties and county sheriffs alleging Fourth Amendment violations and state law claims arising out of her arrest and detention. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part and vacated and remanded in part. The appeals court held that the arresting officer was not entitled to qualified immunity because the warrant under which he brought the arrestee to jail explicitly directed that it was to be executed by bringing the defendant immediately before a sitting judge. The court also found that a fact question precluded summary judgment on the unreasonable strip search claim against the county where the arrestee was jailed. (Kennebec County and Knox County, Maine)

U.S. Appeals Court
FALSE
IMPRISONMENT

Scull v. New Mexico, 236 F.3d 588 (10th Cir. 2000). A detainee sued state and local officials alleging he was unlawfully detained for 30 days without initiation of extradition proceedings. The appeals court found that the detainee, who had previously signed a waiver of extradition as a condition of parole in another state, had no constitutional or statutory right to specific extradition procedures. The appeals court held that county detention center officials were not required by the federal constitution or statute to independently investigate the detainee's claim that he was entitled to be released pursuant to an order issued by a judge in another county. According to the court, the officials believed they had lawful authority to imprison the detainee based on a "hit" on the National Crime Information Center (NCIC) database indicating the existence of an outstanding warrant for the detainee's arrest in another state. The court held that officials were not liable for false imprisonment under state law. (Bernalillo County Detention Center, New Mexico)

2001

U.S. District Court
FALSE
IMPRISONMENT

Jones v. Lopez, 262 F.Supp.2d 701 (W.D.Tex. 2001). A prisoner brought a state court suit, alleging that his detention for 253 days beyond the term of his confinement violated his due process rights and constituted false imprisonment. The district court held that the defendants were not entitled to absolute or absolute quasi-judicial immunity from the prisoner's claims, nor were they entitled to qualified immunity. The court also held that the prisoner was falsely imprisoned, under state law, as it was undisputed that there was no valid order of confinement justifying the prisoner's prolonged confinement. (Bexar County, Texas)

U.S. District Court
FALSE
IMPRISONMENT

Padilla v. Miller, 143 F.Supp.2d 479 (M.D.Pa. 2001). A driver who had been detained, arrested and held in custody following an illegal search of his vehicle during a traffic stop, brought a § 1983 action. Following a non-jury trial the judge found that the plaintiffs were entitled to only nominal damages. The district court granted, in part, a motion to amend the findings and judgment. The court held that both the driver and his wife were entitled to compensatory damages for the period of illegal detention and search, but neither was entitled to emotional distress damages or punitive damages. The plaintiffs were awarded a total of \$6,000. (Pennsylvania State Police Swiftwater Barracks, and Monroe County Correctional Facility)

U.S. Appeals Court
FALSE
IMPRISONMENT

Streit v. County of Los Angeles, 236 F.3d 552 (9th Cir. 2001). Detainees brought a § 1983 action against a county and sheriff's department seeking damages for overdetention. The district court denied the defendants' motion to dismiss and the appeals court affirmed. The appeals court held that the county would be subject to liability under § 1983 and that the sheriff's department was not entitled to Eleventh Amendment immunity because the department was not acting as an arm of the state when it administered county jails. Before an inmate is released from custody the sheriff's department conducts a check of a computerized database to confirm that the inmate is not wanted by any other law enforcement agency. But the department's policy requires this check to be run only after all wants and holds that arrive on a given day are entered into the database. Entering wants and holds can take up to two days, resulting in extended incarceration for inmates beyond their release date. (Los Angeles County Sheriff's Department, California)

2002

U.S. District Court
FALSE IMPRISON-
MENT

Barstow v. Shea, 196 F.Supp.2d 141 (D.Conn. 2002). A nurse brought a suit against her supervisor at a locked nursing facility located in a correctional center. The nurse alleged that the supervisor prevented her from leaving work, despite her desire to seek medical treatment for an illness. The district court granted summary judgment, in part, in favor of the nurse. The court held that the supervisor was not entitled to qualified immunity for allegedly unreasonably seizing the nurse and for allegedly arbitrarily subjecting the nurse to differential treatment by requiring

the nurse to have a coworker complete a medical incident report regarding her medical condition. The court found that the supervisor could be held liable for false imprisonment under state law, for directing a correctional officer not to unlock a door to permit the nurse to leave the facility due to a claimed illness. (Osborn Correctional Center, Connecticut)

U.S. District Court
FALSE IMPRISON-
MENT

Biberdorf v. Oregon, 243 F.Supp.2d 1145 (D.Or. 2002). A state prisoner who was denied credit for time served due to a record-keeping error, sued the state and a county under § 1983 and state law. The district court denied summary judgment on the issue of whether the error was the result of an official county policy that prohibited a detention records technician from counting the days that the inmate served for the same charge under two different court case numbers, and on the issue of discretionary immunity on the inmate's claim of false imprisonment. The court held that the state and county were not entitled to indemnity on claims under § 1983 for false imprisonment. A county detention technician had erroneously certified the number of days the county had detained the inmate pretrial on a burglary charge, which resulted in the inmate's "over-detention" and late release from prison. (Multnomah County Jail, Oregon)

U.S. Appeals Court
FALSE IMPRISON-
MENT
DUE PROCESS

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002). An arrestee who was detained by a police officer and held for 12 days on outstanding warrants for the arrest of his twin brother brought a § 1983 action alleging false arrest and violation of due process. The district court entered judgment upon jury verdict in favor of police officer defendants, but against the city defendants in the amount of \$11,250, and awarded attorney fees in the amount of \$92,211 to the arrestee. The city appealed and the appeals court affirmed, finding that the city's detention of the arrestee deprived him of a significant liberty interest and that the city's warrant procedures constituted "policies" for the purposes of § 1983. The court noted that neither a fingerprint comparison nor a Department of Motor Vehicles check was completed during the arrestee's 12 days of detention and that the arrestee continuously protested the mistaken identity. He was only released after he filed a citizen's complaint from jail. (City of Long Beach, California)

U.S. District Court
FALSE IMPRISON-
MENT

Peacock v. Mayor and City Council of Baltimore, 199 F.Supp.2d 306 (D.Md. 2002). A detainee sued local and county officials alleging false arrest and false imprisonment. The district court granted summary judgment for the defendants. The court held that members of the sheriff's office could not be held liable for detaining the inmate for 10 days without investigating his claim that he had already completed his sentence for violation of probation. It was eventually confirmed that the detainee had served his sentence, and he was released (Baltimore Co. Det. Ctr., Maryland)

U.S. District Court
FALSE IMPRISON-
MENT

Potts v. City of Philadelphia, 224 F.Supp.2d 919 (E.D.Pa. 2002). An arrestee sued a city and city officials asserting § 1983 claims. The district court granted summary judgment in favor of the defendants on federal claims and dismissed state claims. The court held that the 30-hour detention of the arrestee did not violate the Fourteenth Amendment protection against deprivation of liberty without due process of law. The court noted that the U.S. Supreme Court suggested in *Baker v. McCollan* (443 U.S. 137 1979) that prolonged detention in the face of a person's protestation of innocence may violate the Fourteenth Amendment but that detention for three days "does not and could not amount to such a deprivation." Because the arrestee in this case was detained for 30 hours, the court found no constitutional violation. (Southwest Detective Division, City of Philadelphia, Pennsylvania)

U.S. Appeals Court
ARREST AND
DETENTION

U.S. v. Hernandez, 281 F.3d 746 (8th Cir. 2002). An inmate who had been convicted in federal court sought to appeal his conviction. The appeals court affirmed, finding that an overnight delay between the defendant's arrest on a drug charge and his appearance before a magistrate was neither excessive nor unnecessary, and that the defendant's statements while detained would not be suppressed. The court noted that the defendant was arrested in the evening and was questioned by police for two hours, and appeared before a magistrate the next morning, following a total delay of 15 hours. (Iowa)

U.S. District Court
ARREST AND
DETENTION

Wilson v. Zellner, 200 F. Supp.2d 1356 (M.D.Fla. 2002). The district court granted summary judgment to a state trooper and a county prison official who had allegedly violated a prisoner's rights by delaying his release from prison for one day while arrangements were being made for him to be held by state police. The county prison official had delayed the prisoner's release, based only on a telephone call from state officials, without a valid arrest warrant in her possession. The court noted that it was not clearly established at the time of this incident that it was unlawful to detain a prisoner for a period of time based on an oral representation of an outstanding arrest warrant. (Sumter County Correctional Institution, Florida)

2003

U.S. District Court
ARREST AND
DETENTION

Disability Advocates, Inc. v. McMahon, 279 F.Supp.2d 158 (N.D.N.Y. 2003). An advocacy group for disabled persons, and an individual subjected to a mental hygiene pickup, brought an action under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging that the state criminalized mental hygiene pickups by treating or labeling them as arrests, thereby

discriminating against persons with mental disabilities. The district court granted summary judgment for the defendants. The court held that the custodial detention of a mentally ill person constituted an "arrest" but that the detention did not violate due process. The court found that an individual taken into custody in connection with a mental hygiene pickup was not stigmatized by reason of her disability in violation of ADA or the Rehabilitation Act, where police acted because the individual appeared to be mentally ill and was acting in a manner that was likely to result in serious harm to herself or to others. (New York State Police)

U.S. District Court
FALSE ARREST

Jimenez v. New Jersey, 245 F.Supp.2d 584 (D.N.J. 2003). An arrestee whose charges were subsequently dropped, brought a state court action alleging violation of his constitutional rights and various state court claims. The case was removed to the federal district court, where it was dismissed. The district court held that the arrestee had no due process right to pre-trial DNA testing, and therefore officers could not be held liable under § 1983. The arrestee had been held for 22 months, during which time he asked for DNA testing, asserting it would prove him innocent of the charges. (Atlantic County, New Jersey)

U.S. Appeals Court
UNLAWFUL DETENTION

Williams v. Kaufman County, 352 F.3d 994 (5th Cir. 2003). Detainees brought a § 1983 action against a sheriff and county, alleging violation of their civil rights during the execution of a search warrant at a night club. The district court entered judgment against the defendants and they appealed. The court found that the prolonged detention of the detainees was unlawful, but that the law was not clearly established at the time of the detention and the district court had properly granted qualified immunity to the defendants on the unlawful detention claims. The court held that the detainees established the county's municipal liability for their strip search and detention, and that the district court did not err in imposing nominal damages of \$100 per plaintiff. The searches and detention were conducted according to a sheriff department's unwritten policy for executing "hazardous" warrants, according to the court. The appeals court found that the record supported the district court's conclusion that the sheriff acted with reckless indifference toward the plaintiffs' constitutional rights, justifying an award of punitive damages, and held that punitive damage awards of \$15,000 per plaintiff were not excessive. The plaintiffs had been held for three hours and were subjected to highly intrusive strip searches, and the sheriff kept the plaintiffs handcuffed after they had been searched and no weapons or contraband had been found. (Kaufman County, Texas)

2004

U.S. Appeals Court
FALSE IMPRISONMENT

Davis v. Hall, 375 F.3d 703 (8th Cir. 2004). A former state inmate brought a § 1983 action against prison officials, alleging due process violations in connection with his prolonged incarceration after he was ordered released. The district court granted final judgment for the inmate and the officials appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that prison officials who failed to release the inmate for 57 days after a judge ordered the release deprived him of his Fourteenth Amendment right to be free from wrongful, prolonged incarceration. (Fulton Reception and Diagnostic Center, Missouri)

U.S. Appeals Court
FALSE ARREST

Escalera v. Lunn, 354 F.3d 198 (2nd Cir. 2004). A county corrections officer who had been arrested for official misconduct brought a § 1983 claim, alleging false arrest and malicious prosecution in connection with an investigation that officials conducted on him. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded with instructions. The court held that a police detective, police sergeant, commissioner of corrections, and county were entitled to qualified immunity. The court found that "arguable probable cause" exists if either it was objectively reasonable for an officer to believe that probable cause existed, or if officers of reasonable competence could disagree on whether the probable cause test was met. (Westchester County Correctional Facility, New York)

U.S. District Court
FALSE ARREST
FALSE IMPRISONMENT

Johnson v. Board of Police Com'rs, 351 F.Supp.2d 929 (E.D.Mo. 2004). Homeless persons sued a city board of police commissioners and a police captain, claiming harassment with the intent to remove them from a downtown area in violation of their constitutional rights. The district court entered a preliminary injunction on behalf of the plaintiffs. The court barred the continuation of the challenged police practices, which included a pattern of arrests without probable cause, throwing firecrackers into homeless groups, and inflicting community service work without the adjudication of any crime. Several homeless persons were given a choice of performing manual labor or remaining in jail, without being charged with any offense nor found to have committed any offense. (City of St. Louis, Missouri)

U.S. District Court
ARREST AND
DETENTION
UNLAWFUL DETENTION

Ramos Bonilla v. Vivoni Del Valle, 336 F.Supp.2d 159 (D.Puerto Rico 2004). A protester filed a § 1983 action alleging violation of his constitutional rights at a demonstration. The district court dismissed the action. The court held that the protester's half-hour detention during a protest was not so egregious as to violate his substantive due process rights under the Fourteenth Amendment, noting that the protestor was able to return to the demonstration after his release. (Puerta de Tierra Police Station, Puerto Rico)

U.S. District Court
FALSE IMPRISON-
MENT

Tinius v. Carroll County Sheriff Dept., 321 F.Supp.2d 1064 (N.D.Iowa 2004). A detainee filed a § 1983 action alleging that deputy sheriffs unlawfully detained him, and that medical procedures were performed on him without his consent. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the deputy sheriffs were justified in detaining the apparently intoxicated detainee under their community caretaking function, where a deputy came across the detainee walking along a rural roadway in winter without proper attire. According to the court, the law was not clearly established at the time of the incident that the Fourth Amendment barred law enforcement officials from seizing apparently intoxicated persons, or from restraining a detainee during medical procedures that were being conducted for non-investigatory purposes. The court found that the detention did not constitute false imprisonment. The court held that the hospital was not immune from liability for failing to obtain informed consent before performing an involuntary catheterization on the detainee, where the detainee never requested treatment at the hospital, and the officers who brought him to the hospital had no authority to act on his behalf. (Carroll County Sheriff Department, Iowa)

2005

U.S. District Court
UNLAWFUL DETEN-
TION

Arline v. City of Jacksonville, 359 F.Supp.2d 1300 (M.D.Fla. 2005). A suspect who was acquitted of murder brought a § 1983 action challenging a delay in his release after he was acquitted. The court held that the city was not liable under § 1983 for an allegedly improper custodial interrogation. The court found that summary judgment for the defendants was precluded by a genuine issue of material fact as to whether the suspect's nearly three-hour post-acquittal detention by a sheriff's office was reasonable. The suspect alleged that the city's policies and procedures relating to transporting and releasing detainees following acquittal at trial violated his Fourth Amendment rights. (City of Jacksonville, Florida)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Davis ex rel. Davis v. Borough of Norristown, 400 F.Supp.2d 790 (E.D.Pa. 2005). A parent and minor child brought a § 1983 action against a borough and police officers, alleging constitutional violations in connection with the child's arrest and detention after the child dropped bottles of beer that he was holding and fled. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that fact issues existed as to whether the borough had a policy or custom of detaining juveniles for underage drinking. The court also found fact issues as to whether officers' conduct was reckless or callous with respect to the force used in the arrest. The child alleged that he was tackled into cement steps, punched in the face, kicked in the face and that his arm was pulled so hard that it broke his shoulder. According to the court, the plaintiffs failed to establish that the borough had a custom or policy of inadequately training its officers in the use of force. (Borough of Norristown, Pennsylvania)

U.S. District Court
FALSE IMPRISON-
MENT

DeToledo v. County of Suffolk, 379 F.Supp.2d 138 (D.Mass. 2005). A jail visitor who was arrested and briefly detained on an arrest warrant that was intended for another person, and a visitor who was arrested and strip searched on a warrant for her arrest that had been recalled, brought an action against correctional officers, a jail supervisor and the county. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the supervisor's negligent conduct in mistakenly ordering the arrest of the wrong person did not rise to the level of a due process violation that would support a claim under § 1983, where the supervisor made a reasonable assumption as to the warrant target's location in the visiting area and immediately rescinded the arrest when he was alerted to his mistake by another officer. The court found that a fact issue precluded summary judgment in favor of the supervisor for arresting the second visitor, noting that the supervisor had in his hands documents which, if read, would have revealed that the arrest warrant had been recalled. The court granted summary judgment to low-ranking correctional officers who conducted a strip search on the second visitor under then-existing policies that called for strip searches of prisoners. According to the court, reasonable officers in their positions would not have known that their actions would violate the Fourth Amendment. (South Bay House of Corrections, Suffolk County, Massachusetts)

U.S. District Court
FALSE IMPRISON-
MENT

Garcia Rodriguez v. Andreu Garcia, 403 F.Supp.2d 174 (D.Puerto Rico 2005). An arrestee brought a civil rights claim alleging that he was illegally detained following his arrest on a warrant for failure to pay alimony. The district court held that the arrestee stated a claim for false imprisonment in violation of his Fourth Amendment rights. The arrestee alleged that the officers who arrested him had no authority under the arrest warrant to immediately incarcerate him, but should have caused his appearance before a judge. The arrestee was held in prison for five days until bail was paid by his relatives. (Bayamon Penitentiary, Puerto Rico)

U.S. Appeals Court
UNLAWFUL DETEN-
TION

Holmes v. Crosby, 418 F.3d 1256 (11th Cir. 2005). A parolee who had successfully defended parole violation charges brought a § 1983 action against a parole officer and individual parole board members, alleging false imprisonment and violation of his due process rights. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court

reversed and remanded. The court held that the defendants were entitled to absolute quasi-judicial immunity from liability because they were acting within the scope of their duties. (Georgia Board of Pardon and Paroles)

U.S. District Court
FALSE IMPRISON-
MENT
DUE PROCESS

Lingenfelter v. Bd. Of County Com'rs of Reno Cty., 359 F.Supp.2d 1163 (D.Kan. 2005). A detainee filed a civil rights complaint alleging that he was arrested without a warrant and detained unlawfully for eight days without a judicial determination of probable cause. The district court denied the defendants' motion to dismiss. The court held that the detainee stated a claim for violation of his right to a prompt judicial determination of probable cause. The court found that the detainee state a claim against a sheriff in his official and personal capacities, and denied qualified immunity from liability for the sheriff. The court found that the facts could conceivably be produced that the sheriff's alleged policy or custom of not effectuating probable cause determinations for detainees who were arrested without a warrant was a substantial factor in bringing about the alleged violation. (Reno County Jail, Kansas)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Luckes v. County of Hennepin, 415 F.3d 936 (8th Cir. 2005). An arrestee brought a § 1983 action against a county and a sheriff related to his 24-hour detention after his arrest. The district court granted summary judgment in favor of the defendants and the arrestee appealed. The appeals court affirmed, finding that the arrestee's due process rights were not violated by his twenty-four hour detention following his arrest for an outstanding bench warrant, since the length of the detention did not shock the conscience and the arrestee did not complain of any mistreatment by jail staff. The arrestee had failed to pay fines for two traffic citations and bench warrants had been issued. His license had also been suspended. He was stopped and cited for driving without a license and then he was arrested pursuant to the bench warrants. He was placed in a holding cell, where an officer told him that he had "picked the worst day to be here" because the jail had just activated a new computerized jail management system and problems were encountered. A sign posted in the jail asked inmates to "be patient" and that it "may take more than eight hours" to process their paperwork. During his 24-hour detention the arrestee was repeatedly placed in overcrowded cells with persons arrested for crimes that were significantly more violent in nature than failure to pay traffic fines. He endured threats and intimidation from other inmates, as well as mockery prompted by his speech impediment. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
FALSE IMPRISON-
MENT

Perez-Garcia v. Village of Mundelein, 396 F.Supp.2d 907 (N.D.Ill. 2005). A county jail detainee brought an action against a county and sheriff under § 1983 alleging violation of his due process rights, and asserting claims for false imprisonment. The district court granted the defendants' motion to dismiss in part, and denied it in part. The court held that the detainee's complaint against the sheriff sufficiently stated a claim for deprivation of due process rights, where the detainee alleged he was jailed for nearly one month over his vigorous and repeated protests that he was the wrong person, that he provided jail personnel with his identification card and repeatedly told them he was not the named suspect, that his physical appearance did not match the suspect's description, and that his detention continued for a day after a court ordered his release. According to the court, the detainee sufficiently alleged that a policy, practice or custom of the sheriff's department caused the alleged deprivation, and that the sheriff was responsible for setting and supervising jail policies and procedures that did not require confirmation of the detainee's identity. (Lake County Jail, Illinois)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Russell v. Hennepin County, 420 F.3d 841 (8th Cir. 2005). A detainee sued a sheriff, deputies, inspectors and a county, alleging that his six-day prolonged detention at a county detention center violated his Fourth and Fourteenth Amendment rights and constituted false imprisonment under state law. The district court granted the county's motion for summary judgment and the detainee appealed. The appeals court affirmed. The court held that the detention center's policy regarding the monitoring of inmates who were subject to conditional release was not deliberately indifferent to inmates' constitutional rights because of the lack of policies to expedite the process of conditional release. The court found that the detainee failed to establish that the detention center's policy regarding the monitoring of inmates who were subject to conditional release caused his prolonged detention, where at worst, his detention for six additional days resulted not from the executing of the policy, but from the failure to assiduously follow the policy. The court held that the detainee did not demonstrate municipal liability where he failed to show a widespread pattern of failing to follow the "check daily" policy with respect to detainees subject to conditional release. (Hennepin County Adult Detention Center, Minnesota)

2006

U.S. District Court
FALSE IMPRISON-
MENT

Atkins v. City of Chicago, 441 F.Supp.2d 921 (N.D.Ill. 2006). A former inmate sued the Illinois Department of Corrections and state officials under § 1983, charging them with having violated his constitutional rights by his wrongful month-long detention at a correctional center. The district court held that the officials to whom the arrestee protested that he had been misidentified were not entitled to qualified immunity, where the inmate claimed that his constantly reasserted

claims of misidentification were never investigated. The court noted that his date of birth, physical appearance and Social Security number differed from that of the wanted suspect, and the officials had ready access to both parties' fingerprints, such that it would have been easy to confirm that he was not the man named in a warrant. (Stateville Corr'l Center, Illinois)

U.S. District Court
ARREST AND
DETENTION

Bircoll v. Miami-Dade County, 410 F.Supp.2d 1280 (S.D.Fla. 2006). A deaf motorist brought an action against a county, alleging that his arrest for driving under the influence (DUI) and subsequent detention violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA). The motorist alleged that throughout the arrest process, the county failed to establish effective communication because it did not provide him with any auxiliary aids as required by the ADA and RA. The county moved for summary judgment and the district court granted the motion. The court held that the motorist's arrest for driving under the influence (DUI) and his subsequent stationhouse detention was not covered by the ADA or the Rehabilitation Act (RA). According to the court, the motorist's arrest was due to his erratic and suspicious driving, not his disability, and following his arrest the police merely communicated the breath test consent form to the motorist, who foreclosed further questioning by requesting an attorney through his driver's rights card. The court held that the detention of the motorist following his arrest for driving under the influence (DUI) did not violate the Rehabilitation Act (RA), where the motorist was not detained because of his disability, but instead was detained because Florida law required a DUI arrestee to be detained for at least eight hours. The court found that a county police officer did not intentionally discriminate, act in bad faith, or act with deliberate indifference during the initial stop and arrest of the motorist, as required to support the award of compensatory damages under the Rehabilitation Act (RA). As the officer became aware of the motorist's disability, the officer allowed the motorist to get out of his car so they could speak face to face, and attempted to communicate through sign language. The officer believed in good faith that effective communication was established because the motorist responded to him, and the motorist read the implied consent form. The court found that the detention of the deaf motorist in solitary confinement following his arrest did not rise to the level of intentional discrimination or deliberate indifference to the motorist's disability, as required to support the award of compensatory damages under the Rehabilitation Act (RA). Corrections facility officers believed that their communication with the motorist was effective and they detained the motorist in solitary confinement as a good faith protective measure, not as a discriminatory act. (Miami-Dade County, Florida)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006). A prisoner brought an action against prison officials and parole board members, alleging that she was illegally incarcerated in violation of § 1983, and asserting state law claims for false imprisonment and invasion of privacy. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the parole board members, parole agent, warden and correctional officers were entitled to absolute immunity. The court noted that parole board members had the authority under state law to make such decisions based on the prisoner's signed parole agreement, and the warden's and correctional officers' incarceration of the prisoner was based on a facially valid court order. (S.Dakota State Penitentiary)

U.S. Appeals Court
FALSE IMPRISON-
MENT
IDENTIFICATION

Hernandez v. Sheahan, 455 F.3d 772 (7th Cir. 2006). An arrestee brought a § 1983 action against a city and county sheriff's department, alleging that police and sheriff's deputies violated his Fourth and Fourteenth Amendment rights by refusing to entertain his claim that he was being held in custody due to mistaken identity. The district court granted summary judgment in favor of city, and entered judgment upon a jury verdict against the sheriff's department. The arrestee and sheriff's department appealed. The appeals court affirmed in part and reversed in part. The court held that the sheriff's department was not entitled to quasi-judicial immunity in the arrestee's § 1983 action, where units of government were not entitled to immunity in § 1983 actions, and the judge who arraigned the arrestee did not forbid the sheriff's department from conducting further inquires into the arrestee's identity. The court found that the sheriff's department policy of ignoring an arrestee's claims of mistaken identity after an arrestee has appeared in court and a judge had ordered him held in custody did not violate the arrestee's right to due process, as required for the department to be liable under § 1983 to the arrestee. The detainee was held by the department for 13 days after his arraignment on a warrant that had been issued for someone else. The court noted that the judge did not abdicate responsibility to determine the arrestee's identity or delegate that responsibility to the department, and there was no doubt that the arrestee was the person that the judge ordered held at arraignment. (Cook County, Illinois)

U.S. Appeals Court
INVESTIGATIVE
DETENTION

Lopez v. City of Chicago, 464 F.3d 711 (7th Cir. 2006). An arrestee brought an action against a city and city police officers, alleging the duration and conditions of his detention violated his Fourth and Fourteenth Amendment rights, and asserting a claim for intentional infliction of emotional distress. The district court entered judgment as matter of law in favor of the defendants. The arrestee appealed. The appeals court reversed and remanded. The court found that the arrestee's conditions of confinement civil rights claim for the five-day period between his arrest and his preliminary probable cause hearing was required to be analyzed under the Fourth Amendment, using the "objectively unreasonable" standard, rather than under the Eighth Amendment's "deliberate indifference" standard. The court held that the question was for the jury. The arrestee presented evidence that he was shackled to the wall of an interrogation room for four days, that he was deprived of food, drink, and sleep, and that he was forced to yell for a long period of time before being let out to use the bathroom, and that the defendant officers denied such treatment. The court found that the police officers violated the arrestee's Fourth Amendment right to a prompt judicial probable cause determination by holding him for a period of five days after his arrest without a probable cause hearing, for the purpose of arrestee's § 1983 Fourth Amendment claim, absent any justification for the delay. The arrestee had been arrested for a murder he did not commit. Following his arrest, the defendants-- all police detectives-- kept him shackled to the wall of a windowless, nine-by-seven-foot interrogation room for four days and nights while they investigated the case. The arrestee had nowhere to sleep but a four-foot-by-ten-inch metal bench or the dirty brick floor. The interrogation room had no toilet or sink; he had to "scream" for the detectives to let him out to use a bathroom. He was given only one bologna sandwich and one serving of juice as food and drink during the entire four days and nights that he was kept in the interrogation room. The detectives questioned him from time to time and made him stand in two lineups. After two-and-a-half days in these conditions, the arrestee started to become disoriented and began hearing voices telling him to confess. He ultimately gave a statement containing a false confession that did not match the details of the crime. On the fifth day of his detention, the arrestee was moved to a city lockup, charged, and finally taken to court. The following day, the

police investigation led detectives to another individual who confessed to the murder. The arrestee was released the next day. (Chicago Police Department's Area 5, Illinois)

U.S. District Court
FALSE IMPRISON-
MENT

North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). An insurer sued a county sheriff's office and a number of its officers, seeking a determination of its coverage obligations regarding lawsuits involving former inmates who had been incarcerated over 20 years earlier, but who were recently exonerated. The insurer moved for summary judgment. The district court held that "bodily injury" and "personal injury" covered by the policy did not cover allegations of malicious prosecution and false imprisonment that occurred 20 years earlier. One of the complaints was filed by the estate of an inmate who died in prison in 2000 and was posthumously exonerated later that year. The second complaint was filed by a person who was arrested in 1979 and convicted in 1980 and spent 22 years in prison before he was exonerated and released from prison in June 2001. (Broward County Sheriff's Office, Florida)

U.S. Appeals Court
FALSE ARREST
FALSE IMPRISON-
MENT
IDENTIFICATION

Tibbs v. City of Chicago, 469 F.3d 661 (7th Cir. 2006). An arrestee brought § 1983 action against an arresting officer and city, alleging Fourth Amendment violations. The district court granted summary judgment in favor of the defendants, and the arrestee appealed. The appeals court affirmed. The court held that a police officer acted reasonably, and thus, did not violate the arrestee's Fourth Amendment right against unreasonable seizure, when he made an arrest on an outstanding traffic warrant. According to the court, although the arrestee had a different middle initial and different birth date than the person listed on the warrant, the arrestee had the same first and last name, and when the officer questioned the arrestee about the warrant, he replied, apparently confusing it with a traffic violation that he had actually committed, that he thought it had been taken care of already. The court found that there was no indication that officer knew that the arrestee was not the person for whom the warrant had been issued. The court noted that when the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, the arrest of the second party is a valid arrest. The court also noted that when a person is lawfully arrested pursuant to a valid warrant, police officers and jailers have no constitutional duty to investigate whether the arrestee is actually the person named in the warrant. (City of Chicago, Ill.)

U.S. Appeals Court
INVESTIGATIVE
DETENTION

Walker v. City of Orem, 451 F.3d 1139 (10th Cir. 2006). Two separate actions were brought against a county and individual officers arising out of a police shooting and the subsequent detention of witnesses to the shooting. The district court granted the officers' motion for summary judgment based on qualified immunity. The appeals court held that the 90-minute detention of witnesses to a police shooting was not reasonable for investigative purposes under the Fourth Amendment, but that the constitutional rights of the witnesses to a police shooting to not be detained for 90 minutes following the shooting was not clearly established at the time. According to the court, the witnesses to the shooting failed to establish the county's policy or custom to train its officers concerning the constitutional limitations on detention of witnesses in connection with the police shooting investigations. (Utah County Sheriff's Office, Utah)

2007

U.S. District Court
FALSE ARREST
MALICIOUS
PROSECUTION

Allen v. City of New York, 480 F.Supp.2d 689 (S.D.N.Y. 2007). A prison inmate sued a city and corrections officers, claiming violation of the Eighth Amendment, false arrest, and malicious prosecution arising from a beating administered by the officers while being escorted to his cell. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by fact issues regarding whether officers accompanying inmate could and should have intervened to keep one officer from banging the inmate's head against a wall, whether the officer who allegedly banged the inmate's head against a wall used excessive force, whether an officer who filed a criminal assault complaint against the inmate committed malicious prosecution, and whether that officer was entitled to qualified immunity. (Rikers Island, New York City Department of Corrections)

U.S. District Court
FALSE IMPRISON-
MENT

Gary v. Floyd, 582 F.Supp.2d 741 (D.S.C. 2007). An arrestee brought a civil rights action against an arresting officer and a police department, alleging he was arrested pursuant to improperly obtained warrants. The arrestee sought compensatory and punitive damages for allegedly being held for approximately one month after the charges against him were dropped. The district court held that the arresting officer had probable cause to make the arrest and that the department could not be held liable under the theory of respondeat superior. But the court found that the arrestee was entitled to amend his complaint to include as defendants a sergeant and directors of the detention center. According to the court, an amendment to the arrestee's complaint, alleging that he was not released from confinement within a reasonable time after charges of forgery were dismissed, would not be futile, even though the sergeant's affidavit indicated that the arrestee was released within 48 hours after the detention center received notification that he was to be released. The arrestee alleged that the detention center was immediately notified when the charges were dismissed, but that he was not released for nearly one month. (Greenville City Police Department, Greenville County Detention Center, South Carolina)

U.S. District Court
FALSE IMPRISON-
MENT

Limone v. U.S., 497 F.Supp.2d 143 (D.Mass. 2007). Two former prisoners whose convictions arising out of a murder were overturned, and representatives of two co-defendants who died in prison, sued the United States and individual federal and state law enforcement officers under the Federal Tort Claims Act (FTCA), *Bivens*, § 1983, and state law, alleging their complicity in framing the prisoners. Following a bench trial, the district court entered judgment for the plaintiffs. The court held that: (1) FBI agents engaged in malicious prosecution; (2) agents engaged in a coercive conspiracy; (3) agents intentionally inflicted emotional distress on the prisoners; (4) agents were negligent in their treatment of prisoners; (5) FBI was liable for negligent supervision of the agents activities; (6) damages for wrongful imprisonment would be set at the rate of \$1 million per year, adjusted for unrelated concurrent sentences; (7) loss of consortium damages would be awarded to wives and children of prisoners; and (8) damages would be awarded for intentional infliction of emotional distress. (Massachusetts)

U.S. District Court
FALSE IMPRISON-
MENT

Peterson v. Tomaselli, 469 F.Supp.2d 146 (S.D.N.Y. 2007). A former state prisoner brought a § 1983 action against an assistant district attorney (ADA), a city, the commissioner of a city corrections department, and unnamed defendants, alleging that his constitutional rights were violated when he was held in a state prison longer than legally prescribed. The district court granted the defendants' motion for summary judgment. The court held that the ADA did not violate the

prisoner's Eighth Amendment rights and that the ADA did not violate the prisoner's due process rights. The court held that the prisoner's claim that he was being kept in a state prison for eight months beyond his properly-calculated conditional release date, if proven, did not violate the prisoner's Eighth Amendment rights, where the prosecutor had no knowledge that the unwarranted punishment would be inflicted, the prosecutor reasonably believed that the prisoner would receive credit for his federal sentence when serving the state sentence, and there was no causal connection between the prosecutor's alleged actions and the prisoner's extended incarceration. (Federal Corr'l Institution, Ray Brook, New Jersey)

2008

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT
IDENTIFICATION

Castro v. City of Hanford, 546 F.Supp.2d 822 (E.D.Cal. 2008). An arrestee brought an action against a county, city, and various law enforcement officers, alleging violation of his Fourth Amendment rights, and asserting various state law claims, including false arrest, and false imprisonment. The district court granted summary judgment for the county. The court held that the county was not liable under § 1983 for the county jail officer's alleged unconstitutional conduct in failing to perform live scan fingerprinting on the arrestee while he was in custody, absent a showing that the county had a policy or practice not to perform such fingerprinting. The court found that county jailers had a reasonable belief that the detainee was the person named in an arrest warrant, and did not have reason to know that the detainee was not the subject of the warrant, and thus, the detainee could not prevail in false imprisonment and negligence claims. The court noted that the jailers relied upon the information provided to them by the arresting officers, and there was no court order or other independent evidence that would have called the lawfulness of the detention into question. (Hanford Police Department, Kings County Jail, California)

U.S. Appeals Court
ARREST AND
DETENTION
INVESTIGATIVE
DETENTION
UNLAWFUL
DETENTION

Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept., 533 F.3d 780 (9th Cir. 2008). Detainees, who were anti-abortion activists who had displayed photographs of aborted fetuses on the streets outside a middle school's campus, brought a § 1983 action against a county sheriff's department, individual deputies in their individual and official capacities, and a middle school official in his individual and official capacity, alleging free speech and Fourth Amendment violations arising from their detention and the search of their vehicle. The district court dismissed or granted summary judgment for the defendants on all claims. The detainees appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court held that the Fourth Amendment was violated by the officers' 75-minute detention of the anti-abortion activists, which followed a valid Terry stop to investigate possible vehicular violations after the activists drove a "security vehicle" and truck featuring graphic photographs of aborted fetuses on public streets around the middle school. According to the court, the detention should have lasted only long enough to allow the officers to examine the security vehicle and determine whether there were outstanding warrants involving the vehicle or its occupants. (Los Angeles County Sheriff's Department, California)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Farag v. U.S., 587 F.Supp.2d 436 (E.D.N.Y. 2008). Airline passengers detained after a flight landed brought a Bivens action against Federal Bureau of Investigation (FBI) agents, a city police detective, and counterterrorism agents, alleging that their seizure, detention, and interrogation after the flight landed violated their Fourth Amendment rights, and false arrest and false imprisonment claims against United States under Federal Tort Claims Act (FTCA). The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the agents did not have probable cause to detain the airline passengers and that, as an issue of first impression, the agents could not rely on Arab ethnicity alone as probable cause to arrest airline passengers. The court held that the detention of the airline passengers at the terminal after their plane landed was a de facto arrest, rather than a Terry stop, for the purposes of the passengers' Fourth Amendment claims under the Federal Tort Claims Act (FTCA). The court noted that upon entering the terminal the passengers were met by police dogs and at least ten uniformed police officers in SWAT gear carrying shotguns. They were taken to separate locations about thirty-five to forty-feet apart, each accompanied by two police officers, ordered to raise their hands, and frisked. They were held in separate cells at a police station. The passengers were removed from the airline concourse and taken to a jail cell between five and fifteen minutes away by car. The court found that the four hour detention of passengers in a city jail was not a justified Terry stop for the purposes of the passengers' Fourth Amendment claims and common-law false imprisonment and false arrest claims. (Port Authority Police Station, Kennedy Airport, New York)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT
PROBABLE CAUSE

Holguin v. Lopez, 584 F.Supp.2d 921 (W.D.Tex. 2008). An arrestee brought § 1983 and state law claims against an officer. The officer moved to dismiss for failure to state a claim. The court granted the motion in part and dismissed in part. The court held that the arrestee stated a cause of action in his complaint for false arrest and false imprisonment under Texas law, in that he sufficiently alleged that the arresting officer did not have probable cause to arrest him for driving while intoxicated (DWI) and the charge of phone harassment. (Socorro Police Jail, Texas)

U.S. Appeals Court
ARREST AND
DETENTION
DUE PROCESS

Jenkins v. Currier, 514 F.3d 1030 (10th Cir. 2008). A state prisoner brought a pro se § 1983 action against state officials alleging that the officials violated his constitutional rights and state law when they took him into custody without a warrant or a probable cause hearing, and transferred him to a correctional facility in order for him to serve his previously imposed sentence. The district court dismissed the prisoner's claims with prejudice. The prisoner appealed. The appeals court affirmed. The court noted that under Oklahoma law, a convicted defendant who is at liberty without having served his sentence may be arrested as on escape and ordered into custody on the unexecuted judgment. According to the court, state officials did not violate the Fourth Amendment when they seized the state prisoner without a warrant, after having been released from federal custody erroneously, so that he could serve the remainder of his unfinished state sentence. The court noted that the officials had reason to believe that the prisoner had not completed serving his state sentences and there were no special circumstances that would have made his otherwise permissible arrest unreasonable. The court also found that the prisoner had no due process right to a hearing when he was taken back into custody. (Oklahoma)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Odd v. Malone, 538 F.3d 202 (3rd Cir. 2008). Detainees held as material witnesses whose testimony was vital to murder prosecutions brought an action against a district attorney's office and prosecutors who had secured bench warrants for their arrests. The detainees alleged that the prosecutors failed to notify relevant authorities that the underlying action for which the first detainee was held had been continued for nearly four months and that the underlying action for which the second detainee was held had been dismissed. One detainee had been held for 54 days and the other was held for 58 days. The

district court dismissed the first detainee's claims under § 1983 and state law, and denied the motion to dismiss the second detainee's § 1983 claims. The parties appealed. The appeals court held that the prosecutor's act of failing to notify the judge that issued the bench warrant for the first detainee's arrest that the prosecution had been continued was not an advocative act, warranting absolute prosecutorial immunity. The court also found that the prosecutor's act of failing to notify relevant authorities that the second detainee remained incarcerated despite dismissal of the prosecution was not an advocative act for which the prosecutor would be entitled to absolute prosecutorial immunity. The court noted that a prosecutor disobeyed a judge's explicit instructions that he be advised of any delay, as well as a rule requiring the prosecutor to keep the court informed of the status of detained material witnesses. The court concluded that policy considerations underlying absolute prosecutorial immunity counseled against granting absolute immunity to the prosecutors in these cases, where there was no common law tradition of extending absolute immunity to a prosecutor for failing to notify the court of the status of a detained witness. The court concluded that denying absolute immunity in these cases would not likely interfere with prosecutors' independent decisionmaking by exposing them to vexatious litigation. The court also noted that by virtue of their status as third-party witnesses, the detainees were not entitled to the protections available to criminal defendants, including the appellate process. (Office of District Attorney of Philadelphia, Pennsylvania)

U.S. District Court
FALSE IMPRISON-
MENT

Petaway v. City of New Haven Police Dept., 541 F.Supp.2d 504 (D.Conn. 2008). An arrestee brought a § 1983 action against a city, its police department, and individual officers, alleging that his constitutional rights were violated when he was not arraigned within the time prescribed under state law. The court held that the municipal police department was not subject to suit pursuant to § 1983 and that the arrestee was not falsely imprisoned during the 29-day period between his arrest and arraignment. According to the court, the Connecticut arraignment statute did not give rise to a due process liberty interest. The court noted that the arrestee was lawfully in the custody of the Department of Corrections pursuant to a remand to custody order for a separate parole violation during the 29 days prior to his arraignment. (New Haven Police Department, New Haven Correctional Center, Connecticut)

U.S. District Court
PROBABLE CAUSE

Portentos v. Kern, 532 F.Supp.2d 920 (N.D. Ohio 2008). A parolee brought a § 1983 action against a state parole authority and officers, stemming from an alleged illegal search of his residential property and his arrest. The defendants moved for dismissal and for summary judgment. The district court granted the motion in part and denied in part. The court held that the state parole officers had probable cause to search the parolee's barn, for the purposes of the parolee's Fourth Amendment claim alleging warrantless and illegal search, since the parolee's ex-wife had reported to officers that her daughter told her there were weapons in the barn. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the parolee consented to the state parole officers' search of his house after searching the barn for weapons. The court found that the state parole officers had probable cause to arrest the parolee after finding ammunition in his house, since possession of ammunition contravened the parolee's conditions of supervision. (Ohio)

U.S. District Court
FALSE IMPRISON-
MENT

Sheppard v. U.S., 537 F.Supp.2d 785 (D.Md. 2008). A detainee brought an action against the federal Bureau of Prisons (BOP) claiming negligence pursuant to the Federal Tort Claims Act (FTCA) for his illegal detention for over nine months. The district court denied the government's motion to dismiss for lack of jurisdiction or, in the alternative, for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the role and duties of BOP personnel who were allegedly responsible for the continued confinement of the detainee during his false imprisonment. The BOP asserted that the employees were "investigative or law enforcement officers" for the purposes of the government's waiver of sovereign immunity. The detainee had been sentenced to 121 months of incarceration in a federal prison in Leavenworth, Kansas. The district court granted the request of the United States Attorney for the District of Columbia to reduce his sentence to time served and ordered his release. The detainee was not released for approximately ten months after the court's order. (District of Columbia, and U.S. Penitentiary, Leavenworth, KS)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT
MALICIOUS
PROSECUTION

Smith v. City of Oakland, 538 F.Supp.2d 1217 (N.D. Cal. 2008). After a jury rendered a verdict in favor of a parolee and his girlfriend based on a finding that officers planted a semi-automatic rifle in his residence in order to frame him, the officers filed post-trial motions seeking to overturn the jury's verdict on both liability and damages. The district court held that substantial evidence supported the jury's verdict in favor of the parolee but that the \$5 million dollar emotional distress award to the parolee was grossly excessive. According to the court, the emotional distress award to the parolee for malicious prosecution that resulted in 4 1/2 months imprisonment, the indignity of having to defend himself against trumped-up criminal charges and parole revocation proceedings, the uncertainty and apprehension about his fate and future caused by the false arrest, and loss of his house and relationship with his girlfriend was grossly excessive. The court granted a new trial on damages unless the parolee accepted a reduction from \$5 million to \$3 million. The court found that the parolee was not precluded from recovering damages that accrued after the indictment on his malicious prosecution claim against the police officers. The court noted that the parolee's testimony was corroborated by another witness, the lack of any fingerprints on the gun, expert's testimony about standard police procedures, the testimony of a parole agent that an inspection of the parolee's home was scheduled for that same day, the lack of any other guns or ammunition found in the search of the house, and inconsistencies in the officers' testimony. The court also found that the award of \$750,000 to the parolee's girlfriend for emotional distress suffered when officers' conducted a suspicionless search of the parolee's residence while she was present was grossly excessive, and was subject to reduction to \$300,000. (City of Oakland, California)

U.S. District Court
FALSE IMPRISON-
MENT

Stanley v. Muzio, 578 F.Supp.2d 443 (D.Conn. 2008). An arrestee brought a § 1983 action against two state judicial marshals, the Connecticut State Police and individual troopers and officers of the Connecticut State Police, alleging false imprisonment and use of excessive force. Following dismissal of claims against the State Police, troopers and officers, the marshals moved to dismiss. The district court granted the motion in part and denied in part. The court held that the marshals did not enjoy state statutory immunity from federal claims and from the state law false imprisonment claim. The court found that the arrestee stated a § 1983 claim for false imprisonment. According to the court, the marshals were not entitled to quasi-judicial immunity or qualified immunity. The court noted that the arrestee's claim for false imprisonment under Connecticut law, alleging that two state judicial marshals kicked him in the head and back after he was forcibly restrained, were sufficient to allege reckless, wanton, or malicious conduct that was outside the scope of the defendants' employment as state judicial marshals. The court found that the arrestee's allegation that two state judicial marshals told him that he had to remain in the

courtroom for five minutes following a hearing on a restraining order obtained by his wife and forcibly stopped him when he tried to leave after three minutes stated a § 1983 claim for false imprisonment. (Connecticut State Judicial Marshals, Connecticut State Police)

U.S. Appeals Court
FALSE ARREST

Vondrak v. City of Las Cruces, 535 F.3d 1198 (10th Cir. 2008). An arrestee filed a § 1983 action against a city and its police officers alleging illegal arrest, excessive force, inadequate medical attention, and failure to train. The district court granted in part and denied in part the defendants' motion for summary judgment. The parties filed cross-appeals. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the police officers ignored the arrestee's complaints that his handcuffs were too tight, and whether the arrestee suffered permanent nerve injury because of the handcuffing. (Las Cruces Police Department, New Mexico)

2009

U.S. District Court
FALSE IMPRISON-
MENT

Blandford v. District of Columbia Jail, 593 F.Supp.2d 255 (D.D.C. 2009). An arrestee brought a civil rights action against a District of Columbia jail, alleging that he was detained for seven days without a lawful basis. The district court granted the defendant's motion for summary judgment. The court held that the arrestee failed to demonstrate that he was detained beyond his purported release date, as required to state a § 1983 claim against the jail for unlawful detention. The court noted that the arrestee appended to his complaint a document that showed he was freed two days after his purported release date and voluntarily appeared in court on that date, and jail records showed that the arrestee was released on the same day that bond was posted on his behalf, and was not in jail at any time after the purported release date. (Dist. of Columbia Jail)

U.S. Appeals Court
DUE PROCESS
FALSE IMPRISON-
MENT
PROBABLE CAUSE

Cloaninger ex rel. Estate of Cloaninger v. McDevitt, 555 F.3d 324 (4th Cir. 2009). A former detainee, who had been seized by deputies for a psychological evaluation, brought a § 1983 action against deputy sheriffs and others alleging violations of the Fourth and Fourteenth Amendments. The district court awarded summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed. The court found that the deputies had probable cause to seize and detain the detainee for a psychological evaluation, after a dispatcher received a 911 call from a hospital to report that the detainee, who had called the hospital to report an adverse reaction to his prescription medication, had threatened suicide. The deputies knew that the detainee had made prior suicide threats, that police had responded to those threats, and that firearms had been found in the home. The court held that exigent circumstances existed to support the warrantless seizure of the detainee for psychological evaluation in his home. (Burke County, North Carolina)

U.S. Appeals Court
FALSE ARREST
PROBABLE CAUSE
UNLAWFUL DETEN-
TION

Drogosch v. Metcalf, 557 F.3d 372 (6th Cir. 2009). An arrestee brought a § 1983 action against a parole agent and others, alleging false arrest and unlawful detention in violation of the Fourth Amendment. The district court granted summary judgment in favor of the defendants on all claims but the one against the parole agent for unlawful detention. The district court denied the agent's motion for reconsideration and the agent appealed. The appeals court affirmed. The court held that the arrestee's 13-day confinement in jail without a probable cause hearing violated the Fourth Amendment. The court found that the parole agent was the person responsible for ensuring that the arrestee received a prompt probable cause hearing after his warrantless arrest for allegedly violating probation. The court held that the parole agent was not entitled to qualified immunity because he logged the arrestee into jail incorrectly as a parole violator, which ensured that the arrestee would not receive a prompt probable cause hearing. (Mich. Department of Corrections and Wayne County Jail, Michigan)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Limone v. U.S., 579 F.3d 79 (1st Cir. 2009). Former prisoners whose murder convictions were overturned, and representatives of codefendants who died in prison, brought an action against the United States Government, asserting claims under the Federal Tort Claims Act (FTCA) arising from the Government's involvement in framing the prisoners. Following a bench trial, the district court entered judgment for the plaintiffs, and the Government appealed. The appeals court held that evidence supported the district court's conclusion that the FBI's conduct in cultivating witness's testimony inculcating wrongly accused defendants in a state murder prosecution, while possessing information undercutting the testimony's veracity, was extreme and outrageous, as required to state a claim for intentional infliction of emotional distress under Massachusetts law and the Federal Tort Claims Act (FTCA). According to the court, the FBI agents knowingly participated in events leading to wrongful indictment, prosecution, conviction and continued incarceration of the defendants, they aided a witness in framing the plaintiffs and they bolstered the credibility of the witness's testimony. The appeals court held that the FBI's conduct did not fall within the Federal Tort Claims Act's (FTCA) discretionary function exception, and thus the Government was not immune from the defendants' claim for intentional infliction of emotional distress under Massachusetts law and FTCA. According to the court, the FBI's conduct violated due process. The appeals court ruled that non-economic damages awards of \$1 million per year of wrongful incarceration in the plaintiffs' action were not excessive and the damages awards were not grossly disproportionate to the injuries sustained and did not shock the conscience. (Federal Bureau of Investigation, Suffolk County, Massachusetts)

U.S. District Court
ARREST AND
DETENTION
IDENTIFICATION
PROBABLE CAUSE

Ortega Melendres v. Arpaio, 598 F.Supp.2d 1025 (D.Ariz. 2009). Detainees of Hispanic descent brought an action against a county sheriff for declaratory and injunctive relief, alleging that deputies from the sheriff's office profiled, targeted, and ultimately stopped and detained persons based on their race in violation of the Fourth and Fourteenth Amendments. The district court ruled against the defendants' motion to dismiss. The court held that: (1) allegations were sufficient to state Fourth Amendment claims; (2) allegations were sufficient to state equal protection claims; (3) the county was subject to municipal liability; and (4) the court would not dismiss the county sheriff's office as a non-jural entity. The plaintiff was detained for four hours in a police holding cell without being apprised of any charges against him, and was then handed over to Immigration and Customs Enforcement officials. The court held that an allegation that deputies placed the Hispanic passenger of a speeding vehicle in full custodial arrest for violating United States immigration laws, even after the passenger provided them with sufficient immigration documents, including a United States Visa containing a fingerprint and picture, a Department of Homeland Security (DHS) permit, and a Mexican Federal Voter Registration Card with a picture and fingerprint, was sufficient to state a claim for a Fourth Amendment violation for being placed into full custodial arrest without probable cause. The court noted that an allegation that the deputies' request for an Hispanic driver's Social Security

card was not “standard procedure” for all routine traffic stops conducted by the county. According to the court, allegations that the county sheriff made a public statement that physical appearance alone was sufficient to question an individual about their immigration status, that the county's crime suppression sweeps had been allegedly targeted at areas having a high concentration of Hispanics, and that the county had used volunteers with known animosity towards Hispanics and immigrants to assist in crime sweeps, were sufficient to allege a discriminatory purpose, as required to state a § 1983 equal protection claim. (Maricopa County Sheriff's Office, Cave Creek Holding Cell, Arizona)

U.S. District Court
DUE PROCESS
UNLAWFUL
DETENTION

Padilla v. Yoo, 633 F.Supp.2d 1005 (N.D.Cal.2009). *Reversed* 678 F3d 748. A detainee, a United States citizen who was designated an “enemy combatant” and detained in a military brig in South Carolina, brought an action against a senior government official, alleging denial of access to counsel, denial of access to court, unconstitutional conditions of confinement, unconstitutional interrogations, denial of freedom of religion, denial of right of information, denial of right to association, unconstitutional military detention, denial of right to be free from unreasonable seizures, and denial of due process. The defendant moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, who was a United States citizen, had no other means of redress for alleged injuries he sustained as a result of his detention, as required for Bivens claim against the senior government official, alleging the official's actions violated constitutional rights. The court noted that the Military Commissions Act was only applicable to alien, or non-citizen, unlawful enemy combatants, and the Detainee Treatment Act did not “affect the rights under the United States Constitution of any person in the custody of the United States.” The court found that national security was not a special factor counseling hesitation and precluding judicial review in the Bivens action brought by the detainee. Documents drafted by the official were public record, and litigation may be necessary to ensure compliance with the law. The court held that the detainee sufficiently alleged that the official's acts caused a constitutional deprivation, as required for the detainee's constitutional claims against the official. The detainee alleged that the senior government official intended or was deliberately indifferent to the fact that the detainee would be subjected to illegal policies that the official set in motion, and to a substantial risk that the detainee would suffer harm as a result, that the official personally recommended the detainee's unlawful military detention and then wrote opinions to justify the use of unlawful interrogation methods against persons suspected of being enemy combatants. According to the court, it was foreseeable that illegal interrogation policies would be applied to the detainee, who was under the effective control of a military authority and was one of only two suspected enemy combatants held in South Carolina. The court found that the detainee's allegations that he was detained incommunicado for nearly two years with no access to counsel and thereafter with very restricted and closely-monitored access, and that he was hindered from bringing his claims as a result of the conditions of his detention, were sufficient to state a claim for violation of his right to access to courts against a senior government official. The court held that federal officials were cognizant of basic fundamental civil rights afforded to detainees under the United States Constitution, and thus a senior government official was not entitled to qualified immunity from claims brought by the detainee. The court also held that the official was not qualifiedly immune from claims brought by the detainee under the Religious Freedom Restoration Act (RFRA). *On appeal*, 678 F3d 748, the appeals court reversed the district court decision, finding that the official was entitled to qualified immunity because there had not been a violation of well established law. (Military Brig, South Carolina)

U.S. Appeals Court
FALSE ARREST
PROBABLE CAUSE

Thomas v. City of Peoria, 580 F.3d 633 (7th Cir. 2009). An arrestee who was stopped by a city police officer for a traffic violation and arrested after the officer mistakenly identified him as an individual who had nine unpaid parking tickets and a warrant out for his arrest, brought a § 1983 action against the city and a prosecutor seeking relief on behalf of a class of similarly situated individuals who had been arrested by the city for parking violations. The arrestee alleged that the city had an unconstitutional policy of arresting people for not paying their parking tickets. The district court granted the defendants' motions for summary judgment. The arrestee appealed. The appeals court affirmed. The court held that the fact that an otherwise reasonable arrest was not for an “arrestable” offense would not make it unconstitutional, that an arrest for a “nonjailable” offense would not violate the Fourth Amendment, and the prosecutor was entitled to absolute immunity from damages for her action in filing motion for an arrest warrant. (City of Peoria, Illinois)

U.S. District Court
FALSE IMPRISON-
MENT

Willey v. Kirkpatrick, 664 F.Supp.2d 218 (W.D.N.Y. 2009). A state prisoner brought an action under § 1983 against a prison superintendent, corrections sergeant, corrections officers, and others. The defendants filed a motion to dismiss for failure to state a claim on which relief could be granted. The district court denied the motion, finding that the prisoner's allegations were sufficient to allege a corrections sergeant's personal involvement in a civil rights violation, as well as the superintendent's and corrections officers. The court found that the prisoner's allegations that a prison corrections sergeant supervised corrections officers, that the sergeant “allowed” officers to harass the prisoner by filing multiple false misbehavior reports, that the sergeant “abdicated his duty” to prevent such harassment, and that the sergeant “participated in” the harassment, were sufficient to allege the sergeant's personal involvement in a civil rights violation. According to the court, the prisoner's allegations that he wrote to the prison superintendent challenging his false imprisonment in a special housing unit (SHU) because he had done nothing wrong, and that the superintendent responded but did not remedy the situation, were sufficient to allege the superintendent's personal involvement in constitutional violations, as required to state a claim against the superintendent under § 1983. The court also found that allegations that prison corrections officers issued false misbehavior reports against the prisoner, and that he was not allowed to question witnesses at a hearing and was ejected from the hearing, were sufficient to state claims under § 1983 against the officers for filing false misbehavior reports and violations of due process. (Wende Correctional Facility, New York)

2010

U.S. Appeals Court
FALSE IMPRISON-
MENT

Avalos v. Baca, 596 F.3d 583 (9th Cir. 2010). A detainee brought an action against officers of a county sheriff's department in their official and individual capacities for alleged violations of his Fourth and Fourteenth Amendment rights based on his over-detention and the officers' alleged efforts to procure an involuntary waiver of his civil rights claim. The district court granted summary judgment in favor of the officers. The detainee appealed. The appeals court affirmed. The court held that the officers were not liable under § 1983 in their official capacities on the over-detention claim, absent evidence that they had a policy, practice, or custom of over-detaining inmates. According to the court, the detainee had no freestanding constitutional right to be free of a coercive waiver, and even if the detainee had a right to be free from a coercive waiver, the

officers were entitled to qualified immunity on the involuntary waiver claim. The detainee had been arrested on a warrant from another county for domestic abuse and was transported to the arresting county jail. The arresting county had the responsibility to notify the other county, under state law, but failed to do so. Over two months later the arresting county realized that the detainee had been over-detained and released him. On the day of his release, a deputy in street clothing asked the detainee, who did not speak English, to sign papers that were an offer to settle his claim for over-detention for \$500. The detainee asserted that he did not know what was in the papers. (Los Angeles Sheriff's Department, California)

U.S. Appeals Court
FALSE IMPRISON-
MENT
MALICIOUS
PROSECUTION

Harrington v. City of Nashua, 610 F.3d 24 (1st Cir. 2010). An arrestee brought a § 1983 action against a city and others alleging false imprisonment and malicious prosecution. The district court granted the city's motion for summary judgment and the arrestee appealed. The appeals court affirmed. The court held that the limitations period for a Fourth Amendment claim of false imprisonment begins to run when the false imprisonment ends, when the plaintiff is either released or detained pursuant to a legal process. The arrestee was released on personal recognizance after charges were brought against him. The court noted that the commencement of a criminal case by the institution of a legal process marks the dividing line between claims of false imprisonment and claims of malicious prosecution. The court found that pretrial release conditions imposed on the arrestee did not constitute a Fourth Amendment seizure, as required to support a § 1983 malicious prosecution claim against the city, where the conditions required the arrestee to notify the court of any change in address, to refrain from committing crimes, and to forebear from consuming either controlled substances or excessive quantities of alcohol. (City of Nashua, New Hampshire)

U.S. District Court
FALSE IMPRISON-
MENT
PROBABLE CAUSE

Waker v. Brown, 754 F.Supp.2d 62 (D.D.C. 2010). An arrestee, proceeding pro se, brought a § 1983 action against various defendants, including the District of Columbia mayor and police chief. The defendants filed motions to dismiss and the arrestee filed a motion to compel the identities of police and Department of Corrections (DOC) officers. The district court granted the defendants' motions in part and denied in part, and denied the plaintiff's motion. The court held that police officers did not violate the arrestee's due process rights in arresting him and detaining him for several days, where the arrest was based upon a fugitive warrant from another county that was not invalidated or based upon mistaken identity, and the arrestee appeared before a court and was released on his own recognizance. The arrestee had been held for six days in jail prior to his release. (District of Columbia Jail)

2011

U.S. Appeals Court
FALSE IMPRISON-
MENT

Brown v. Montoya, 662 F.3d 1152 (10th Cir. 2011). A probationer, who had been convicted of false imprisonment under New Mexico law, brought § 1983 claims against a probation officer and the New Mexico Secretary of Corrections, alleging that he was wrongly directed to register as a sex offender and was wrongly placed in a sex offender probation unit, in violation of his rights to substantive due process, procedural due process, and equal protection. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the complaint was insufficient to overcome the Secretary's qualified immunity defense, but the probation officer's alleged actions, if proven, denied the probationer of a liberty interest protected by the Due Process Clause. According to the court, the probation officer's alleged actions of placing the probationer in a sex offender probation unit and directing him to register as a sex offender, after the probationer had been convicted of false imprisonment under New Mexico law, if proven, denied the probationer of a liberty interest protected by the Due Process Clause. The court noted that false imprisonment was not a sex offense in New Mexico unless the victim was a minor. (New Mexico Department of Corrections)

U.S. District Court
FALSE IMPRISON-
MENT

Drumgold v. Callahan, 806 F.Supp.2d 405 (D.Mass. 2011). A former prisoner brought an action against former homicide detectives, a police commissioner, and a city for damages arising from his wrongful conviction and unlawful imprisonment for the murder of a twelve-year-old girl. Following a verdict against the detective in a second trial, the detective filed motions for judgment as a matter of law, for a new trial, and to reduce the jury award. The district court denied the motions. The court held that the detective was not entitled to qualified immunity for failing to turn over impeachment evidence to a prosecutor. The court held that an award of approximately \$1 million per year of the plaintiff's wrongful fourteen-year incarceration was not excessive in the suit against the detective who withheld impeachment evidence, and therefore a reduction in the award was not warranted. The court noted that the jury determined the value of non-economic damages. (City of Boston, Massachusetts)

U.S. District Court
FALSE IMPRISON-
MENT
MALICIOUS
PROSECUTION

Drumgold v. Callahan, 806 F.Supp.2d 428 (D.Mass. 2011). A plaintiff brought a § 1983 action against a state prosecutor, alleging withholding of evidence resulted in his wrongful conviction and incarceration for 14 years. After a jury verdict in his favor, the plaintiff moved for attorney fees and costs. The district court held that counsel was entitled to \$1,613,847 in reasonable attorneys' fees and \$51,632 in costs. The court noted that the proposed rates for the plaintiff's attorneys were reasonable based on their experience, the requested number of hours was adjusted downward to reflect unsuccessful claims, and there was nothing to indicate that the time records submitted were not contemporaneous. (City of Boston, Massachusetts)

U.S. District Court
FALSE IMPRISON-
MENT

Harbeck v. Smith, 814 F.Supp.2d 608 (E.D.Va. 2011). A former pretrial detainee brought a § 1983 action against a public defender, clerk of court, and deputy clerk of court, alleging that she was unlawfully imprisoned for 87 days after criminal charges against her were dismissed, in violation of her rights under Fourth and Fourteenth Amendments, and false imprisonment under Virginia law. The defendants moved to dismiss for failure to state claim. The district court granted the motions in part and denied in part. The court held that the detainee failed to state § 1983 and false imprisonment claims against public defender and that the public defender was entitled to governmental immunity against a legal malpractice claim. The court found that the detainee's allegations were sufficient to state a § 1983 claim against the clerk and that the clerk was not entitled to quasi-judicial immunity against the § 1983 claim and was not entitled to sovereign immunity against the negligence claim. The court also found that the detainee alleged necessary conduct by the clerk and deputy clerk to state a claim for punitive damages. According to the court, the allegations that the clerk of court received at least two letters notifying her that the pretrial detainee should be released, and that she still failed to take action to effectuate that release after criminal charges against the detainee were dismissed, were sufficient to allege the clerk's personal involvement in the detainee's continued detention. The court noted that the clerk's alleged inaction in procuring the detainee's release after

criminal charges were dismissed was not a choice within the clerk's discretion and was not taken pursuant to the state court's direction. The court also held that the clerk of court failed in her execution of a ministerial duty, precluding her entitlement to sovereign immunity against the pretrial detainee's negligence claim, where the clerk received orders for detainee to be released, which the clerk's office was then required to notify the jail of the detainee's change in status so as to effectuate her release. (Hampton Roads Regional Jail, and Circuit Court of the City of Hampton, Virginia)

U.S. District Court
FALSE ARREST
PROBABLE CAUSE

Morse v. Regents of University of California, Berkeley, 821 F.Supp.2d 1112 (N.D.Cal. 2011). A journalist arrested while covering a demonstration at a university sued the university's board of regents, its police department and various officers on the department, asserting § 1983 claims for violation of the First Amendment, the Fourth Amendment, and the Excessive Bail Clause of the Eighth Amendment, as well as a claim for violation of the Privacy Protection Act. The defendants filed a partial motion to dismiss. The district court granted the motion in part and denied in part. The court held that the journalist stated a § 1983 claim for violation of the Excessive Bail Clause of the Eighth Amendment on the theory that the defendants added unsupported charges for the sole purpose of increasing his bail. The court found that the theory was viable under the Excessive Bail Clause, despite the indirect means the defendants allegedly used to obtain the higher bail, and the intervening actions of the judicial officer who actually set bail. The court found that the journalist stated a § 1983 claim against the police chief in his individual capacity where the journalist asserted that the chief failed to train or supervise those individuals who directly deprived the journalist of his constitutional rights and that, by his policy decisions, he set in motion the acts that deprived the journalist of his constitutional rights. The court held that the journalist's claims that he was wrongfully arrested by university police and that his property was subject to searches and seizures without proper cause and without the proper warrants, stated a claim under the Privacy Protection Act (PPA) against the university police chief for failure to screen, train, and supervise. The court noted that the journalist's claim related specifically to the statutory provisions of the PPA, that he alleged sufficient facts to support his claim of a causal connection between the police chief's conduct and the statutory violation, and liability was not limited to those personally involved in the statutory violation. (University of California, Berkeley)

U.S. District Court
FALSE IMPRISON-
MENT

Reed v. Baca, 800 F.Supp.2d 1102 (C.D.Cal. 2011). A detainee brought a § 1983 action against a sheriff, county, and the sheriff's department, alleging wrongful arrest and detention. The defendants moved for summary judgment. The district court granted the motion. The court held that the county and the sheriff's department did not infringe on the pretrial detainee's Fourteenth Amendment rights by detaining him pursuant to a valid warrant but in the face of repeated protests of innocence, despite the detainee's argument that the county and the department knew or should have known that he was entitled to release prior to dismissal of the case against him. According to the court, even assuming a violation, the detainee failed to present evidence to show that his continued detention, beyond the point at which the county and the department allegedly knew or should have known he was entitled to release, was pursuant to a policy or custom evincing deliberate indifference to his constitutional rights, as would support liability. The court found that the county sheriff was not liable in his individual capacity under § 1983 for the pretrial detainee's over-detention, absent evidence that the sheriff had any direct contact with the detainee or actual knowledge of claimed constitutional violations, or condoned, ratified, or encouraged the alleged constitutional violations in any way. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
FALSE IMPRISON-
MENT

Schneyder v. Smith, 653 F.3d 313 (3rd Cir. 2011). A detainee who was being held as a material witness in a homicide prosecution brought a civil rights action against the prosecutor who secured her arrest warrant, alleging the prosecutor failed to have her released from custody knowing that her testimony was not required for several months. The district court entered an order granting the prosecutor's motion to dismiss and the detainee appealed. The appeals court reversed and remanded. On remand, the district court entered an order denying the prosecutor's motion for summary judgment, and the prosecutor appealed. The appeals court affirmed. The appeals court held that the prosecutor's conduct was sufficient to establish prima facie violation of the detainee's Fourth Amendment rights. According to the court, the detainee's Fourth Amendment right to be free from unreasonable seizures was clearly established and the prosecutor was not entitled to prosecutorial immunity. (Philadelphia, Pennsylvania)

U.S. District Court
MALICIOUS
PROSECUTION

Tillman v. Burge, 813 F.Supp.2d 946 (N.D.Ill. 2011). A former prisoner, who served nearly 24 years in prison for rape and murder before his conviction was vacated and charges were dismissed, brought a § 1983 action against a city, county, police officers, police supervisors, and prosecutors, as well as a former mayor, alleging deprivation of a fair trial, wrongful conviction, a Monell claim, conspiracy under § 1985 and § 1986, and various state law claims. The defendants filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the former prisoner's allegations that police officers engaged in suppressing, destroying, and preventing discovery of exculpatory evidence, including instruments of torture used to coerce the prisoner's confession, stated a § 1983 claim against the police officers for a Brady violation, despite the officers' contention that the prisoner was aware of everything that he claimed was withheld at the time of the trial. The court found that the former prisoner's complaint, alleging that municipal officials acted in collusion with a former mayor and a state's attorney and high-ranking police officials to deflect public scrutiny of the actions of police officers that suppressed and prevented discovery of exculpatory evidence, which prolonged prisoner's incarceration, stated a § 1983 claim against municipal officials for deprivation of fair trial and wrongful conviction.

According to the court, a prosecutor was not entitled to absolute immunity from the § 1983 complaint by the former prisoner, alleging that the prosecutor personally participated in the prisoner's interrogation and that of a codefendant, and then suppressed the truth concerning those events. The court found that the allegation put the prosecutor's conduct outside the scope of his prosecutorial function. The court held that the complaint by the former prisoner, alleging that the former prosecutor encouraged, condoned, and permitted the use of torture against the prisoner in order to secure a confession, stated a § 1983 claim against the prosecutor for coercive interrogation, in violation of the Fifth and Fourteenth Amendments. The court noted that the allegations supported the inference that the prosecutor participated in an investigatory rather than a prosecutorial role. According to the court, the "Plaintiff's 46-page complaint sets forth an account of the murder of Betty Howard and Plaintiff's arrest and prosecution for that murder, including the torture he alleges he endured at the hands of Area 2 police officers. The complaint also details the history of torture at Area 2 and the alleged involvement of the various Defendants in that torture and in subsequent efforts to cover it up." (Cook County, Illinois)

U.S. District Court
FALSE IMPRISON-
MENT

Tookes v. U.S., 811 F.Supp.2d 322 (D.D.C. 2011). An arrestee brought an action under the Federal Tort Claims Act (FTCA) against the United States, alleging assault and battery, false imprisonment, and negligent training and supervision. The United States filed a motion for partial summary judgment. The district court granted the motion in part, and denied in part. The court held that the training and supervision of Deputy United States Marshals was a discretionary function, and therefore, the discretionary function exception to FTCA precluded subject matter jurisdiction of the arrestee's negligent training and supervision claims, following an alleged attack by marshals. The court noted that there were no statutes, regulations, or policies that specifically prescribed how to train or oversee marshals, and decisions involved social, economic, and political policy in that decisions had to balance budgetary constraints, public perception, economic conditions, individual backgrounds, office diversity, experience, public safety, and employee privacy rights, as well as other considerations. According to the court, there was no evidence that the arrestee should have known she could be diagnosed as suffering from post-traumatic stress disorder following an alleged false imprisonment by United States marshals, and therefore, the arrestee was not limited from seeking greater damages for her emotional injuries than the amount claimed in her administrative form, in her FTCA claim. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the United States marshals falsely imprisoned the arrestee by bringing her back into a courthouse. (United States Marshals Services, District of Columbia)

2012

U.S. District Court
FALSE ARREST

Amobi v. District of Columbia Government, 882 F.Supp.2d 78 (D.D.C. 2012). A corrections officer brought an action against other officers, a prison director, and the District of Columbia, alleging false arrest and malicious prosecution. The defendants moved for summary judgment. The district court granted the motion. The court held that the officer could not assert false arrest and malicious prosecution claims against other corrections officers for reporting his restraint of a transgender inmate, which resulted in criminal charges against the officer, even though the assault charges were eventually dropped against the officer upon the inmate's admission that he had provoked the officer. The court noted that the reporting officers described what they observed and provided probable cause for the arrest and prosecution. (District of Columbia Jail)

U.S. Appeals Court
INVESTIGATIVE
DETENTION
PROBABLE CAUSE
FALSE ARREST

Bernini v. City of St. Paul, 665 F.3d 997 (8th Cir. 2012). Thirty-two arrestees filed a § 1983 action against a city and police officers in their individual capacities for allegedly violating the First and Fourth Amendments by detentions and arrests, on the first day of the Republican National Convention. The charges were ultimately dismissed. The district court granted the city and the officers summary judgment and the arrestees appealed. The appeals court affirmed. The court held that police officers' brief detention of seven members of a group at a park during the Republican National Convention comported with Fourth Amendment reasonableness requirements for investigative detention, since the group members were detained only while the officers sought to determine which members were involved in a prior confrontation with officers at an intersection.

The court found that the officers had arguable probable cause for the mass arrest of 160 people in the park, based on an objectively reasonable mistaken belief that all 160 people were part of a unit of 100 protestors that officers had probable cause to believe had committed third-degree riot and unlawful assembly in violation of Minnesota law. According to the court, the officers' deployment of non-lethal munitions, as authorized by the lead sergeant commanding mobile field force operations during the confrontation with a crowd at the Republican National Convention, was not excessive force, under the Fourth Amendment, since officers reasonably believed that the noncompliant crowd intended to penetrate a police line blocking access to the downtown. (City of St. Paul, Minnesota)

U.S. District Court
ARREST AND
DETENTION
PROBABLE CAUSE

Gooding v. Ketcher, 838 F.Supp.2d 1231(N.D.Okla. 2012). A musician brought an action against a marshal of the Cherokee Nation and a deputy county sheriff, sheriff, casino employees, county police officer, jail employees, and a nurse, alleging false imprisonment, assault and battery, and violation of his First, Fourth, and Fourteenth Amendment rights, and seeking declaratory judgment that Oklahoma law governing flag burning and desecration was unconstitutional. The musician had been arrested and detained at a local county jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the musician's allegations that his use of an American flag during his performance at a casino was a constitutionally protected activity, that the county sheriff failed to train his deputies as to the constitutional nature of the activity, and that the sheriff adopted an unconstitutional policy and/or custom which led to the musician's arrest and imprisonment, stated a § 1983 claim against the sheriff in his individual capacity as a supervisor for violations of the musician's First, Fourth, and Fourteenth Amendment rights.

The court found that the musician's allegations that the county sheriff was, at all times relevant to the musician's claims related to his arrest and imprisonment, a commissioned law enforcement officer and the duly-elected sheriff and chief policy maker for county sheriff's office, that the deputy sheriff was a commissioned law enforcement officer acting as a marshal for Cherokee Nation and a deputy sheriff for the county's sheriff's office, and that the deputy sheriff was acting as the sheriff's employee during events giving rise to the musician's claims, were sufficient to demonstrate that the sheriff was responsible for the deputy's training and supervision, as required for the musician's § 1983 inadequate training claim against county sheriff in his official capacity. According to the court, the musician's allegations that the county had policy or custom that was the moving force behind the alleged violation of the musician's First, Fourth, and Fourteenth Amendment rights, and that the policy/custom encouraged the confinement of the musician in response to his use of an American flag during a concert for allegedly expressive purposes, stated a § 1983 claim against the county sheriff in his official capacity. The court held that the musician's allegations that the seizure and search of his person were unconstitutional because the underlying conduct for which he was seized was legal and did not provide lawful grounds upon which to base his arrest and the subsequent searches of his person, stated a § 1983 claim against the county sheriff in his official capacity. (Cherokee Casino, Rogers County Jail, Oklahoma)

U.S. District Court
FALSE IMPRISON-
MENT
FALSE ARREST

Harris v. Hammon, 914 F.Supp.2d 1026 (D.Minn. 2012). A prisoner brought a § 1983 action against a county and various officials with the state department of corrections (DOC), alleging violations of the Eighth and Fourteenth Amendments, as well as state law claims for false imprisonment, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED). The defendants moved for summary judgment and for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that there was no evidence of a continuing, widespread pattern of misconduct on account of county employees in not releasing prisoners pursuant to court orders, as required for the

prisoner's § 1983 failure-to-train claims against the county for alleged violations of the Eighth and Fourteenth Amendments. The prisoner had been held for more than five days after a judge ordered his release pending his appeal. According to the court, the former prisoner's allegations were sufficient to plead that department of corrections (DOC) employees were deliberately indifferent to the prisoner's liberty rights under the Fourteenth Amendment, as required to state a § 1983 claim for violations of his due process rights based on his continued detention after a court ordered his release. The prisoner alleged that he had a court order for his release but he was returned to prison, that a judge faxed and mailed the release order to the prison after being contacted by the prisoner's attorney the next day, that the judge's clerk also telephoned employees to inform them that the prisoner was to be released, that one employee did not respond to calls from the prisoner's attorney, that another employee told the attorney he would have to hand deliver a certified copy of order by the end of her shift in three minutes so that the prisoner could be released before the weekend, and that employees told the attorney several days later that they might not be able to release the prisoner because the order could be invalid. The court also held that the prisoner's allegations were sufficient to plead that his continued detention, after his release was ordered by a judge, violated a clearly established right, as required to overcome qualified immunity for department of corrections (DOC) employees. (Lino Lakes Correctional Facility, Ramsey County Jail, Minnesota)

U.S. Appeals Court
DUE PROCESS

Holloway v. Delaware County Sheriff, 700 F.3d 1063 (7th Cir. 2012). An arrestee brought a § 1983 action, alleging that a sheriff, who was sued in his official capacity, violated his rights by detaining him without charges for nine days. The district court granted summary judgment for the sheriff and the arrestee appealed. The appeals court affirmed. The appeals court held that the sheriff did not violate the substantive due process rights of the arrestee, where the sheriff brought the arrestee before court for an initial hearing within 72 hours of his arrest, followed the court's order in holding the arrestee without bond, and released the arrestee promptly, within 72 hours of the initial hearing, excluding intervening weekend days, when the prosecutor did not file charges within the time permitted by the court. (Delaware County Jail, Wisconsin)

U.S. Appeals Court
FALSE ARREST

Livers v. Schenck, 700 F.3d 340 (8th Cir. 2012). Two pretrial detainees, who were arrested for murder, but who were subsequently released after their charges were dropped, brought a § 1983 action against a county sheriff and investigating officers, alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights. The district court entered an order denying the defendants' motions for summary judgment, and they appealed. The appeals court affirmed in part, denied in part, and remanded. The court held that summary judgment was precluded by fact issues as to whether a detainee's confession was coerced, and whether officers fabricated evidence. The court held that the sheriff could not be liable under § 1983 for his alleged failure to train investigating officers not to fabricate evidence, since any reasonable officer would know that fabricating evidence was unacceptable. (Cass County Sheriff's Office, Nebraska)

U.S. District Court
UNLAWFUL
DETENTION
DUE PROCESS

Manning v. Sweitzer, 891 F.Supp.2d 961 (N.D.Ill. 2012). An arrestee brought an action against various village police officers and a village alleging unreasonable search and seizure of her vehicle, denial of the right to counsel, cruel and unusual punishment, conspiracy under § 1985, failure to train, unlawful detention, and several state law claims. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee's allegation that she was offered medication for her unnamed mental ailment while incarcerated, but that she declined to accept the medication "for fear of overmedication or a harmful interaction," failed to establish that she was subjected to inhumane conditions or that the police were deliberately indifferent to a serious medical need, as required to support her claim that she was subjected to cruel and unusual punishment in violation of the Eighth Amendment and the Due Process Clause. According to the court, the arrestee's failure to allege any other incidents of wrongdoing by the village, combined with her failure to show that the unconstitutional consequences of the village's alleged failure to train its police officers were patently obvious, precluded her claim against the village. (Village of Park Forest Police Department, Illinois)

U.S. Appeals Court
FALSE ARREST
FALSE IMPRISON-
MENT

Northfield Ins. Co. v. City of Waukegan, 701 F.3d 1124 (7th Cir. 2012). Insurers that, pursuant to commercial general liability policies, provided law enforcement liability coverage to a city and its employees acting within the scope of their employment, brought a declaratory judgment action, seeking declarations that they had no duty to defend or indemnify the city or its employees in a third-party action in which a civil rights plaintiff alleged that the city and its police officers played a role in his wrongful conviction. The district court granted summary judgment for the insurers and the defendants appealed. The appeals court affirmed, finding that coverage did not exist for a claim alleging false arrest and imprisonment. (Waukegan, Illinois)

U.S. District Court
FALSE IMPRISON-
MENT
FALSE ARREST

Ruffins v. Department of Correctional Services, 907 F.Supp.2d 290 (E.D.N.Y. 2012). A plaintiff brought a § 1983 action against a state's Department of Correctional Services (DOCS) and its commissioner and several employees, and the state's Division of Parole and its chairperson and several employees, alleging wrongful detention for violations of an allegedly illegally-imposed term of post-release supervision (PRS), false arrest and imprisonment, negligence, and a New York state claim for gross negligence. The defendants moved to dismiss. The district court granted the motion. The court held that the individual defendants, who were employees of New York's Department of Correctional Services (DOCS) or Division of Parole, were entitled to qualified immunity for their actions during the time between the administrative imposition of a term of post-release supervision (PRS) and a court decision, which found that such imposition of PRS violated due process guarantees. (New York State Division of Parole, Department of Correctional Services for the State of New York)

U.S. District Court
FALSE IMPRISON-
MENT

Singletary v. District of Columbia, 876 F.Supp.2d 106 (D.D.C. 2012). A parolee brought a § 1983 action against the District of Columbia, seeking money damages for unlawful revocation of his parole by the Parole Board. The district court granted summary judgment in the parolee's favor as to the issue of liability. After a trial on damages, the jury returned a verdict of \$2.3 million for the parolee. The District of Columbia moved for a new trial. The district court denied the motion. The court held that the damages award was not excessive, that the parolee was properly allowed to testify as to what he experienced for the ten years that he was wrongly incarcerated, and that evidence concerning an alleged prior traffic offense was properly excluded. The court found that the jury's damage award to the parolee whose parole was unlawfully revoked, resulting in his serving an additional ten years in prison, of \$230,000 per year—or about forty-four cents per minute—for each year that he was stripped of the privileges of individual choice and physical freedom and subjected to the indignity of incarceration, was not excessive. (District of Columbia Parole Board)

U.S. District Court DUE PROCESS MALICIOUS PROSECUTION PROBABLE CAUSE	<p><i>U.S. v. Maricopa County, Ariz.</i>, 915 F.Supp.2d 1073 (D.Ariz. 2012). The United States filed an action against a county, the county sheriff's office, and the sheriff in his official capacity, relating to treatment of Latinos, including jail detainees, and asserting claims for violations of the Fourth Amendment, retaliation in violation of the First Amendment, violations of equal protection and due process, and discrimination on the basis of race, color, or national origin in violation of Title VI and the Violent Crime Control and Law Enforcement Act. The defendants filed motions to dismiss. The district court denied the county's motion, and granted the sheriff and sheriff's office motions in part and denied in part. The court held that the sheriff's office was an entity that was not capable of being sued in its own name. The court held that the allegations stated a claim under Title VI for disparate impact discrimination, stated a claim for retaliation in violation of the First Amendment, and that the allegations satisfied the requirements for pleading the municipal liability of the county. According to the court, allegations by the United States, that officers from the county sheriff's office routinely and unlawfully targeted Latinos through pretextual traffic stops, crime suppression sweeps, and worksite raids, and that as a result Latinos were far more likely to be deprived of their constitutional rights than non-Latinos, stated a claim for disparate impact discrimination under Title VI by programs or activities receiving federal financial assistance. The court also found that allegations that a former Arizona county attorney acted in concert with the county sheriff's office and the sheriff to file a baseless lawsuit accusing people who had publicly criticized the defendants, and to file baseless state bar complaints against attorneys who spoke out against defendants, and that the defendants used unjustified arrests to intimidate and retaliate against critics of their immigration policies, stated a claim under the Violent Crime Control and Law Enforcement Act for retaliation for exercising First Amendment rights. (Maricopa County Sheriff's Office, Sheriff Joseph M. Arpaio, Arizona)</p>
U.S. District Court FALSE IMPRISONMENT	<p><i>Ward v. Brown</i>, 891 F.Supp.2d 1149 (E.D.Cal. 2012). A former prisoner brought a § 1983 action against a state prison, the state's department of corrections, and prison officials, alleging violation of various constitutional rights, negligence, false imprisonment, and intentional and negligent infliction of emotional distress. Following the grant of the defendants' motions to dismiss the federal claims, and denial of the defendants' motion to dismiss the state claims, the defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by: (1) a material fact issue as to whether a prison official was deliberately indifferent to the prisoner's right to be free from state custody; (2) material factual disputes as to whether the prison official properly retained the prisoner's release date; (3) a material dispute of fact as to whether the department of corrections was put on notice of the prison official's alleged miscalculation of the prisoner's release date; and (4) material disputes of fact as to whether the department of corrections falsely imprisoned prisoner. The inmate challenged the defendants' alleged refusal to correct his release date from a state prison, causing him to be over-incarcerated in a federal prison, in violation of his constitutional rights. (California Department of Corrections and Rehabilitation)</p>
U.S. District Court PROBABLE CAUSE UNLAWFUL DETENTION	<p><i>Wells v. City of Chicago</i>, 896 F.Supp.2d 725 (N.D.Ill. 2012). The representative of the estate of a detainee who died on the night he was to be released from custody brought an action against a city and city police officers, alleging under § 1983 that the defendants unlawfully detained the detainee and denied him medical care. Following a trial, the jury returned a verdict for the representative and against four defendants on the unlawful detention claim, and for the defendants on claims relating to denial of medical care. The defendants moved for judgment as a matter of law or, in the alternative, a new trial or remittitur on the issue of damages. The district court granted the motions in part and denied in part. The district court held that: (1) the issue of whether the defendants held the detainee for more than 48 hours before being taken before a judge or being released, or for less than 48 hours for an improper purpose, was for the the jury; (2) the officers had probable cause to arrest the detainee for a crime with an intent element; (3) the issue of whether individual officers participated in the unlawful detention was for the jury; (4) the officers were not entitled to qualified immunity from the unlawful detention claim; (5) the award of \$1 million in compensatory damages was excessive; and (6) the award of \$150,500 in punitive damages was not warranted where there was little to indicate that the defendants acted with evil intent or callous indifference to the detainee's rights.. The court noted that, although the detainee suffered significant physical pain during the time he was detained, as well as intense humiliation and severe mental and emotional distress, he was in custody for, at most, 53 hours, and only the final five hours of his detention were unlawful. The detainee had driven a semi-trailer truck through a bus stop and into a Chicago Transit Authority "L" Station, killing two women and injuring 20 people. After brief treatment in a hospital, the police transported him to a police station, where he was interviewed and then placed in a holding cell. He ultimately only received a traffic citation, though police kept investigating the collision until the time of his death. Officers were making arrangements to take the detainee to a hospital for evaluation after finding that he had difficulty walking once removed from his cell. He died in the hospital 6 weeks later. (City of Chicago Police Department, Illinois)</p>
2013	
U.S. District Court FALSE IMPRISONMENT	<p><i>Armato v. Grounds</i>, 944 F.Supp.2d 627 (C.D.Ill. 2013). A former inmate, a sex offender, brought an action against Illinois Department of Corrections (IDOC) employees, alleging under § 1983 that the employees violated his rights under Eighth and Fourteenth Amendment by allowing him to be held beyond the term of his incarceration, and asserting a claim for false imprisonment under state law. The employees moved for summary judgment. The district court allowed the motion. The court held that the employees complied with the terms of a state court judge's handwritten sentencing order and the employees were not deliberately indifferent in allegedly allowing the inmate to be held beyond his release date. (Lake County Jail, Robinson Correctional Center, Illinois Department of Corrections)</p>
U.S. District Court FALSE ARREST FALSE IMPRISONMENT MALICIOUS PROSECUTION	<p><i>Donahoe v. Arpaio</i>, 986 F.Supp.2d 1091 (D.Ariz. 2013). A former member of a county board of supervisors brought an action against the sheriff of Maricopa County, Arizona, a former county attorney, and deputy county attorneys, asserting claims under § 1983 and state law for wrongful institution of civil proceedings, malicious prosecution, false imprisonment and arrest, intentional infliction of emotional distress, and unlawful search. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted in part and denied in part the defendants' motions. The court held that summary judgment for the defendants was precluded by fact issues: (1) with respect to the malicious prosecution claims; (2) as to whether misrepresentations and omissions of evidence in a search warrant affidavit were material; (3) as to unlawful search claims against the sheriff and deputy county attorneys; (4) with respect to the false arrest claim; and (5) with respect to the claim for wrongful institution of civil proceedings. The court noted that a reasonable magistrate would not have issued a</p>

search warrant based on the accurate and complete representation of known evidence. The court held that the retaliatory animus of the county sheriff and prosecutors would chill a person of ordinary firmness from criticizing the sheriff and prosecutors and from vigorously litigating against them. According to the court, fact issues as to whether the county sheriff and prosecutors acted outrageously and either intended the arrestee harm, or were recklessly indifferent to whether their actions would infringe on his rights and cause him severe distress, precluded summary judgment for the defendants with regard to the claim for punitive damages in the action for unlawful search, false arrest, malicious prosecution, and First Amendment violations. (Maricopa County Sheriff and County Attorneys, Arizona)

U.S. Appeals Court
FALSE ARREST
FALSE
IMPRISONMENT

Ford v. City of Yakima, 706 F.3d 1188 (9th Cir. 2013). A motorist brought a § 1983 action alleging First Amendment retaliation against a city and police officers who booked and jailed the motorist following a traffic stop. The district court granted summary judgment to the defendants, and the motorist appealed. The appeals court reversed and remanded. The court held that the motorist's criticism of the police for what the motorist perceived to be an unlawful and racially motivated traffic stop was squarely within the protective umbrella of the First Amendment, and any action to punish or deter such speech was categorically prohibited by the federal constitution. The court found that the motorist's booking and jailing by the police officers, allegedly in retaliation for the motorist's criticism of what he perceived to be an unlawful and racially motivated traffic stop, would chill a person of ordinary firmness from future First Amendment activity, as required to support a § 1983 First Amendment retaliation claim against the city and the police officers. The court held that the police officers were not entitled to qualified immunity from the motorist's § 1983 claim that they booked and arrested him in violation of the First Amendment, where it was clearly established that it was unlawful to book and jail motorist in retaliation for First Amendment activity, even if probable cause existed, and a reasonable police officer would have known that it was unlawful to use his authority to retaliate against an individual because of his speech. During the traffic stop one officer said to the motorist: (1) "Stop running the mouth and listen"; (2) "If you talk over me, you are going to go to jail, sir. Do not talk over me"; (3) "If you cooperate, I may let you go with a ticket today. If you run your mouth, I will book you in jail for it. Yes, I will, and I will tow your car"; and (4) "If you cooperate and shut your mouth, I'll give you a ticket and you can go." (City of Yakima Police Department, Washington)

U.S. Appeals Court
IDENTIFICATION
PROBABLE CAUSE
UNLAWFUL
DETENTION

Hernandez-Cuevas v. Taylor, 723 F.3d 91 (1st Cir. 2013). A pretrial detainee brought a Bivens action against FBI agents, alleging that the agents' unlawful conduct caused him to be held in custody for three months without probable cause. The district court denied the agents' motion to dismiss on qualified immunity grounds. The agents appealed. The appeals court affirmed and remanded. The court held that: (1) allegations by the detainee that FBI agents witnessed a black male, short, stocky, and in his late fifties, transfer \$321,956 in drug proceeds to an undercover informant; (2) after a year passed without the FBI being able to locate or identify that suspect, they were under pressure to make an arrest; (3) agents worked with the informant to arrange a tainted photo array, during which informant identified the detainee, who was a tall, thin, 40-year-old, black male, and who had strikingly dissimilar appearance to the suspect; (4) that one agent either knowingly or with reckless disregard for the truth made sworn statements in a warrant affidavit identifying the detainee as the suspect who delivered the tainted cash; (5) that based on the affidavit, a magistrate issued an arrest warrant; and (6) that the detainee was bound over and held in federal custody for three months, stated a Bivens claim against agents for violation of detainee's Fourth Amendment rights. (Puerto Rico)

U.S. District Court
DUE PROCESS
FALSE
IMPRISONMENT

Lucia v. City of Peabody, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. District Court
FALSE ARREST
DUE PROCESS
PROBABLE CAUSE

Melendres v. Arpaio, 989 F.Supp.2d 822 (D.Ariz. 2013). Latino persons brought a class action against a sheriff and sheriff's office, seeking injunctive relief based on allegations of Fourth and Fourteenth Amendments violations in the policy of using race as a factor in determining reasonable suspicion and in investigating or detaining Latino occupants of motor vehicles suspected of being in the country without authorization, without any basis for state charges. The district court entered judgment for the plaintiffs. The court held that: (1) the policy of the sheriff's office directing deputies to detain vehicle occupants because of the belief that occupants were not legally present in the United States violated the Fourth Amendment; (2) the policy permitting deputies to use race or Hispanic appearance as a factor in determining whether there was reasonable suspicion violated the Fourth Amendment; (3) the policy permitting deputies to use race as a factor in forming reasonable suspicion that persons violated state laws relating to immigration status was not narrowly tailored; (4) the sheriff's office intentionally discriminated against Latino persons; (5) deputies investigating the identities of, and arresting, vehicle passengers on immigration violations without reasonable suspicion during a traffic stop lengthened the stop in violation of the Fourth Amendment; and (6) deputies could not use reasonable suspicion of unauthorized presence in the United States, without more, as probable cause or reasonable suspicion that a state law had been violated. (Maricopa County Sheriff, Arizona)

U.S. District Court
DUE PROCESS
IMPRISONMENT
PROBABLE CAUSE

Poche v. Gautreaux, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process. The court also found a procedural due process claim against the district attorney under § 1983 by the detainee's allegation that it was the district attorney's policy and custom to sign charging papers such as bills of information without reading them, without checking their correctness, and without even knowing what he was signing, and that the attorney's policy and custom resulted in a deprivation of her liberty without due process. The court found a substantive due process claim against the district attorney in the detainee's allegation that after obtaining clear direct knowledge that the detainee was being wrongfully and illegally held, the district attorney still failed to correct the mistakes that caused the detention, and to cover up his failures in connection with the case, the district attorney made a conscious decision to bring belated charges against the detainee. The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (East Baton Rouge Prison, Louisiana)

U.S. District Court
FALSE IMPRISONMENT

Taylor v. City of Mason, 970 F.Supp.2d 776 (S.D. Ohio 2013). A deaf arrestee brought an action against a police department and a city, alleging that denial of a qualified interpreter during questioning prior to arrest at the jail violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he was falsely imprisoned. The defendants moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the deaf arrestee's allegations, that police officers denied him the benefits of effectively communicating with them prior to arrest by failing to provide an appropriate auxiliary aid, were sufficient to state a claim under ADA and Rehabilitation Act. The arrestee alleged that he initiated a phone call to police because he had been assaulted, and that, although officers requested an American Sign Language (ASL) interpreter, they did not wait for the interpreter to arrive before they began questioning him, but instead used his alleged attacker as an interpreter, and she reported that the arrestee sexually assaulted her. The court found that the allegations were also sufficient to state a claim under the Rehabilitation Act, where the arrestee alleged that he expressed dissatisfaction with the interpreter provided at the jail, who was not certified in ASL, that he did not fully understand his Miranda rights as explained by the interpreter, and that the lack of a qualified interpreter was directed at him particularly. (City of Mason Police Department and Jail, Ohio)

U.S. District Court
PROBABLE CAUSE

Vollette v. Watson, 937 F.Supp.2d 706 (E.D. Va. 2013). Former food service and medical care contractors who worked at a city jail brought an action against a sheriff, who oversaw the jail, and sheriff's deputies, alleging under § 1983 that their being required to undergo strip searches at the jail violated their Fourth Amendment rights, and that they were retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to what triggered the strip searches of contractors who worked at city jail, the nature of such searches, and the factual predicate for revocation of the contractors' security clearances. According to the court, at the time the contractors were strip searched, it was clearly established, for qualified immunity purposes in the contractors' § 1983 Fourth Amendment unlawful search action against the sheriff and sheriff's deputies, that prison employees did not forfeit all privacy rights when they accepted employment, and thus, that prison authorities were required to have reasonable and individualized suspicion that employees were hiding contraband on their person before performing a "visual body cavity search." The court also found that summary judgment as to the contractors' claims for false imprisonment and battery was precluded by genuine issues of material fact as to what triggered the strip searches. (Aramark and Correct Care Solutions, Contractors, Portsmouth City Jail, Virginia)

U.S. Appeals Court
DUE PROCESS
PROBABLE CAUSE
UNLAWFUL DETENTION

Wilson v. Montano, 715 F.3d 847 (10th Cir. 2013). An arrestee brought a § 1983 action against a county sheriff, several deputies, and the warden of the county's detention center, alleging that he was unlawfully detained, and that his right to a prompt probable cause determination was violated. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The detainee had been held for 11 days without a hearing and without charges being filed. The appeals court held that the defendants were not entitled to qualified immunity from the claim that they violated the arrestee's right to a prompt post-arrest probable cause determination, where the Fourth Amendment right to a prompt probable cause determination was clearly established at the time. The court held that the arrestee sufficiently alleged that the arresting sheriff's deputy was personally involved in the deprivation of his Fourth Amendment right to a prompt probable cause hearing, as required to support his § 1983 claim against the deputy. The arrestee alleged that he was arrested without a warrant, and that the deputy wrote out a criminal complaint but failed to file it in any court with jurisdiction to hear a misdemeanor charge until after he was released from the county's detention facility, despite having a clear duty under New Mexico law to ensure that the arrestee received a prompt probable cause determination. The court held that the arrestee sufficiently alleged that the county sheriff established a policy or custom that led to the arrestee's prolonged detention without a probable cause hearing, and that the sheriff acted with the requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the sheriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and detention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing constitutional violations occurring under his supervision and due to his failure to adequately train his employees; (3) routine warrantless arrest and incarceration of citizens without charges being

filed amounted to a policy or custom; and (4) such policy was the significant moving force behind the arrestee's illegal detention. (Valencia County Sheriff's Office, Valencia County Detention Center, New Mexico)

2014

- U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT
MALICIOUS PROSE-
CUTION
DUE PROCESS
- Chavez v. County of Bernalillo*, 3 F.Supp.3d 936 (D.N.M. 2014). An arrestee brought § 1983 claims and state-law claims against a county and its jail director, relating to the arrestee's detention pursuant to a bench warrant that had been cancelled before the arrest. After removal to federal court, the defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part, and remanded to the state court. The court held that the arrestee's § 1983 claims against a county and its jail director, relating to detention pursuant to a bench warrant that had been cancelled before the arrest, were properly characterized as Fourth Amendment claims for false arrest and false imprisonment, rather than for malicious prosecution. The court found that county jail employees did not violate the plaintiff's Fourth Amendment right to be free from unlawful seizure, when they booked him into the jail following a city police officer's arrest of the plaintiff pursuant to a bench warrant that was facially valid, but that had been cancelled before the arrest. According to the court, county jail employees, upon learning from the arrestee's attorney about the pre-arrest cancellation of the facially valid bench warrant pursuant to which city police officers had conducted the arrest, did not act with deliberate or reckless intent to falsely imprison the arrestee by requiring a release order from a judge, and thus, the arrestee's continued detention for two days, until the release order was issued, did not constitute false imprisonment in violation of the Fourth Amendment. The court noted that jail employees acted reasonably, since a judge could better determine why a bench warrant remained available to city police at the time of arrest, and whether any other basis for detaining the arrestee existed. (Metropolitan Detention Center, Bernalillo County, New Mexico)
- U.S. District Court
FALSE IMPRISON-
MENT
- Hebshi v. U.S.*, 32 F.Supp.3d 834 (E.D.Mich. 2014). After she was forcibly removed from an airliner, detained, and subjected to a strip-search, a passenger brought a civil rights action against federal agents and airport law enforcement officers, alleging discrimination based on race, ethnicity, or national origin, and violations of the Fourth, Fifth, and Fourteenth Amendments. The airline law enforcement officers moved for partial judgment on the pleadings. The district court denied the motion. The court held that the passenger stated claims for unreasonable seizure and unreasonable search, and that the officers were not entitled to qualified immunity. The court held that the passenger's allegations that she was forced off an airplane by armed officers, handcuffed, briefly questioned on the tarmac, transported to a jail, locked in a guarded cell under video surveillance, detained for four hours, and strip-searched, before being extensively questioned about her involvement in other passengers' alleged suspicious activity, were sufficient to allege that the seizure was a de facto arrest made without probable cause in violation of the Fourth Amendment. According to the court, the passenger's allegations that she was arrested, detained for four hours, strip-searched by airport law enforcement officers, based on her alleged involvement in suspicious activities by two other passengers, that the officers made no effort to verify her identity or corroborate any connection between her and the other passengers, and that the strip-search was not conducted promptly, were sufficient to state a claim for unreasonable search under the Fourth Amendment. (Frontier Airlines, Federal Law Enforcement Agents, Wayne County Airport Authority Law Enforcement Agents, Michigan)
- U.S. District Court
DUE PROCESS
UNLAWFUL
DETENTION
- Liska v. Dart*, 60 F.Supp.3d 889 (N.D. Ill. 2014). A pretrial detainee brought an action against a county and a county sheriff, alleging under § 1983 that the defendants deprived him of liberty without procedural due process, and asserting claims under state law for false imprisonment and intentional infliction of emotional distress. The defendants moved to dismiss the case for failure to state a claim. The district court granted the motion in part and denied in part. The court held that: (1) as a matter of first impression, the detainee had a liberty interest protected by procedural due process in remaining on home confinement; (2) the defendants violated the detainee's procedural due process rights; (3) the detainee sufficiently stated the sheriff's personal involvement in the alleged procedural due process violation; and (4) the sheriff was not entitled to qualified immunity. The court noted that the pretrial detainee had a liberty interest protected by procedural due process in remaining on home confinement, and thus the county and county sheriff were required to afford the detainee procedural due process prior to transferring the detainee to jail due to his alleged violation of the terms of home confinement. The detainee alleged that the sheriff was responsible for implementing the cell-box system used in the detainee's home during his home confinement, that the sheriff was aware of issues with the type and brand of system assigned to the detainee and many other home detainees, that the sheriff knew or should have known of the malfunctions of the system in the detainee's home, and that the sheriff allowed the detainee's incarceration in the county jail for violation of the terms of his home confinement despite knowledge of numerous false alarms registered by the system. (Cook County Sheriff's Department, Cook County Jail)
- U.S. District Court
FALSE IMPRISON-
MENT
- Robinson v. Keita*, 20 F.Supp.3d 1140 (D.Colo. 2014). An arrestee brought an action against a city, city police officers, a county, and sheriff's deputies, alleging under § 1983 that he was unreasonably arrested and incarcerated for a 12-day period. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) a front desk officer was entitled to qualified immunity from unlawful arrest claim; (2) the deputies who transported the arrestee from a police station across the street to a detention facility, and assisted in the arrestee's booking, were entitled to qualified immunity from a substantive due process claim; (3) there was no evidence that the city's alleged policy of relying on the state court to schedule a hearing after promptly being advised of a warrant arrest was substantially certain to result in a constitutional violation; but (4) summary judgment was precluded by fact issues as to whether the city had actual or constructive notice that its failure to train as to how to process conflicting information during the process of "packing" an arrest warrant for distribution was substantially certain to result in a constitutional violation, and as to whether the city substantially chose to disregard the risk of harm. (City and County of Denver, Colorado)
- U.S. Appeals Court
FALSE ARREST
IDENTIFICATION
UNLAWFUL DETEN-
TION
- S.L. ex rel. K.L. v. Pierce Tp. Bd. of Trustees*, 771 F.3d 956 (6th Cir. 2014). A juvenile, by and through his guardian, filed a § 1983 action against a township, its police chief, a police officer, the superintendent of a juvenile detention center, and the center's intake officer, alleging false arrest, false imprisonment, malicious prosecution, and loss of filial consortium. The defendants moved for summary judgment. The district court denied the motion. The defendants appealed. The appeals court affirmed, and on remand the district court entered summary judgment in favor of the superintendent and the intake officer, and the plaintiffs appealed. The appeals court affirmed. The court held that the intake officer at the juvenile detention center

had no duty to make an independent assessment of probable cause for the juvenile detainee's arrest and detention, and thus did not violate the detainee's Fourth Amendment rights by signing a complaint prepared by the arresting officer that charged the detainee as a delinquent child. (Clermont County Juvenile Detention Center, Ohio)

U.S. District Court
ARREST AND
DETENTION

Villars v. Kubiатовski, 45 F.Supp.3d 791 (N.D.Ill. 2014). A detainee, a Honduran citizen who had been arrested for driving under the influence and fleeing officers after they effectuated a traffic stop of his vehicle, and subsequently had been held on an immigration detainer from Immigration and Customs Enforcement (ICE) and then on a federal material witness warrant, brought a pro se action against a village, police chief, police officers, sheriff, jail deputies, and an Assistant United States Attorney. The detainee alleged violation of his due process, equal protection, Fourth Amendment, and Eighth Amendment rights. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The district court held that: (1) the detainee stated a claim against the village defendants for violation of his Fourth Amendment and due process rights in connection with his detention after he had posted bond; (2) the detainee stated a claim for violation of his consular rights under Article 36 of the Vienna Convention on Consular Relations; (3) the detainee stated a claim against the county defendants for violation of his Fourth Amendment and due process rights in connection with his 29-hour detention; and (4) absolute prosecutorial immunity did not shield the AUSA from the plaintiff's claims that the AUSA violated his Fourth Amendment and due process rights, along with the federal material witness statute and the federal rules of criminal procedure. The court noted that following the detainee's post-arrest transfer to the county's custody, he was detained for approximately 29 hours pursuant to an Immigration and Customs Enforcement (ICE) detainer request, and that the county lacked probable cause that the detainee had violated a federal criminal law, but instead detained him while the federal government investigated to determine whether or not he had, in violation of the detainee's Fourth Amendment and procedural and substantive due process rights. (Village of Round Lake Beach, Lake County Jail, Illinois)

U.S. District Court
FALSE ARREST

Ysasi v. Brown, 3 F.Supp.3d 1088 (D.N.M. 2014). An arrestee brought a § 1983 action against county sheriff officers and a detention center, alleging false arrest, excessive force, and other claims under the Constitution. The officers and the detention center moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the arrestee presented no evidence that the four-day incarceration prior to his arraignment prejudiced his defense, either in his criminal trial or in the current civil case, by concealing evidence against the arresting county sheriff officers. The court noted that the arrestee was arraigned within the time required by New Mexico rule. (Lea County Detention Center, New Mexico)

2015

U.S. District Court
FALSE IMPRISON-
MENT
UNLAWFUL DETEN-
TION

Mayorov v. United States, 84 F.Supp.3d 678 (N.D.Ill. 2015). A former state prisoner sued the United States, pursuant to the Federal Tort Claims Act (FTCA), claiming negligence and false imprisonment based on Immigration and Customs Enforcement (ICE) issuing an immigration detainer against him, despite his United States citizenship, causing him to spend 325 days in prison that he otherwise would not have served due to the Illinois Department of Corrections (IDOC) rules prohibiting a detainee from participating in a boot camp as an alternative to a custodial prison sentence. The parties moved for summary judgment. The district court held that fact issues as to whether the government breached a duty to reasonably investigate the prisoner's citizenship status prior to issuing an Immigration and Customs Enforcement (ICE) detainer. (Illinois Impact Incarceration Program)

U.S. District Court
FALSE IMPRISON-
MENT

McGowan v. U.S., 94 F.Supp.3d 382 (E.D.N.Y. 2015). A federal prisoner, who was serving the remainder of his sentence at a halfway house, brought an action against a U. S. Bureau of Prisons (BOP) employee who managed the halfway house, alleging violations of his right to free speech, and asserting claims for false arrest, false imprisonment, and negligence under the Federal Tort Claims Act (FTCA). The defendants moved to dismiss. The district court granted the motion and dismissed the action. The court held that the prisoner could not bring a Bivens claim alleging his free speech right was violated when he was transferred from the halfway house to a prison for violating a BOP regulation against publishing under a byline, where the prisoner could have challenged his transfer through a habeas petition after exhausting BOP's administrative remediation process. The court noted that the prisoner's reassignment to prison was rescinded when his lawyers notified the BOP that the byline regulation had been repealed. The court held that the prisoner's confinement was unconditionally privileged, and thus, under state law, he could not assert a claim for false imprisonment against the United States pursuant to the Federal Tort Claims Act (FTCA) based on his brief transfer from the halfway house. (Community First Services, Inc., and Metropolitan Detention Center, New York)

U.S. District Court
FALSE IMPRISON-
MENT
DUE PROCESS

Ngemi v. County of Nassau, 87 F.Supp.3d 413 (E.D.N.Y. 2015). A father brought a § 1983 action against a county, alleging he was denied due process in violation of the Fourteenth Amendment in being arrested and incarcerated for failing to meet his child support obligations. The county moved to dismiss for failure to state a claim. The district court granted the motion, finding that the father received ample process prior to his arrest. The court noted that father was present at the hearing where his failure to comply with the order of support was addressed, an order of disposition was mailed to his home after the hearing and warned him that failure to comply would result in imprisonment, the order afforded the father the opportunity to object, the order of commitment was also mailed to the father and advised him of his ability to appeal, the father never contested the orders, and the father never claimed over the course of four years that he could not pay his child support arrears. (Nassau County Family Court, Nassau County Correctional Center, New York)

U.S. District Court
FALSE ARREST
FALSE IMPRISON-
MENT

Purvis. v. City of Atlanta, 142 F.Supp.3d 1337 (N.D. Ga. 2015). An arrestee brought a § 1983 action against a city, county, and the county sheriff, asserting claims for unlawful arrest and detention in violation of the Fourth and Fourteenth Amendments. The arrestee alleged that, following his lawful arrest for drinking in public, he was unlawfully held by the city and county for an additional five to six days on an invalid warrant. The city, county, and sheriff moved to dismiss. The district court granted the motion and denied in part. The court held that: (1) the allegation was insufficient to establish a pattern or practice on the part of the county or city arising out of an official policy or custom; (2) the sheriff, in his official capacity, was entitled to Eleventh Amendment immunity; (3) the allegations were sufficient to support an inference that the sheriff directed subordinates to act unlawfully; (4) the sheriff was not entitled to qualified immunity from the claim for violation of the arrestee's due process right to timely release; and (5) the sheriff was entitled to qualified immunity from the claim alleging violation of the arrestee's Fourth Amendment rights. (Atlanta City Det. Center, Fulton County Jail, Georgia)

SECTION 17: FEMALE PRISONERS

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1972

U.S. District Court
STAFF

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Female prisoners being processed through the prison shall always be accompanied by a matron. (Orleans Parish Prison, Louisiana)

1973

U.S. District Court
STAFF

Hamilton v. Love, 358 F.Supp. 338 (E.D. Ark. 1973). Jail officials ordered to hire 6 additional correctional officers within one week. Female prisoners are always to be accompanied by matron in the jail. (Pulaski County Jail)

1974

U.S. District Court
COMMUNICATION

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Interference with communication between an inmate and his or her spouse may be unconstitutional as an infringement of rights of family relationships and privacy attached to activities relating to the family. (Mecklenburg County Jail, North Carolina)

1976

U.S. District Court
MEDICAL CARE

Sandlin v. Pearsall, 427 F.Supp. 494 (E.D. Tenn. 1976). Where an inmate appears in need of medical attention but does not get it for a long time, her rights are violated, notwithstanding jury verdict. (County Jail, Tennessee)

1977

U.S. District Court
STAFF
TRANSFER

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. The jail must be supervised by adequately trained officers on a twenty-four hour basis. There should be a matron on call twenty-four hours daily if women are detained in the new facility. Women may not be housed in the jail for longer than it takes to arrange their transfer. (Platte County Jail, Missouri)

U.S. District Court
CLOTHING
VISITS

Forts v. Malcolm, 426 F.Supp. 464 (S.D. N.Y. 1977). Women inmates are permitted to wear pants and have contact visits. (New York City Correctional Institute for Women)

1980

U.S. District Court
EQUAL PROTECTION
PROGRAMMING

Bukhari v. Hutto, 487 F.Supp. 1162 (E.D. Vir. 1980). The Court finds that the differences in programming and conditions between women's and men's facilities violates equal protection but pretermits any remedy. (Virginia Correctional Center for Women, Goodland)

1981

U.S. District Court
PRIVACY

Bowling v. Enomoto, 514 F.Supp. 201 (N.D. Calif. 1981). Inmates have a reasonable expectation of privacy against being observed by guards of the opposite sex while in the nude, absent an emergency. (California State Prison, Soledad)

1982

U.S. District Court VISITS

Boudin v. Thomas, 543 F.Supp. 686 (S.D. N.Y. 1982). Administrative detention is terminated and contact visits are restored by Court. A pretrial detainee sought a writ of habeas corpus challenging her confinement in administrative segregation. The United States District Court held that administrative detention was to be immediately suspended and contact visits between the petitioner and approved visitors were to be initiated, where the detainee had not committed any act or engaged in any conduct threatening herself, staff or institutional security and was not shown to be an escape risk. The defendants presented only vague assertions in attempts to demonstrate the risks posed by contact visits with her infant son. (Metropolitan Correctional Center, New York)

U.S. District Court SEARCHES

Roscom v. City of Chicago, 550 F.Supp. 153 (N.D. Ill. 1982). Sheriff and jail director could be individually liable if they implemented a policy permitting unconstitutional strip searches. A woman arrested for writing dishonored checks has sued the sheriff, jail director, and various city defendants for conducting a visual strip search. Taken from a police station to a hospital when she complained of chest pains, she was subjected to a visual strip search upon her admission to the Cook County Jail. The Court has held that even though the sheriff and jail director were not personally involved with the search, they could be individually liable if the policy which they implemented is found unconstitutional. (Cook County Jail)

1983

State Appeals Court EXERCISE

Daniels v. McKinney, 193 Cal. Rptr. 842 (App. 1983). California appeals court awards fees to inmate counsel and finds that the sheriff is not in willful contempt. In a previous court order, the sheriff had been instructed to provide three hours of exercise per week to all inmates, without regard to sex. Female inmates sought to hold the sheriff in contempt of court for failing to implement the order. They prevailed and secured their exercise privileges. Their counsel was awarded attorney's fees. The sheriff was not held in contempt because the court determined that he made a good faith effort to comply with the previous order, and showed a willingness to comply. However, the court ruled that personnel shortages did not justify the failure to provide female prisoners with exercise. (Fresno County Jail, California)

U.S. District Court SEARCHES

Giles v. Ackerman, 559 F.Supp. 226 (D. Ida. 1983), reh'g, 746 F.2d 614 (1984) cert. denied, 105 S.Ct. 2114 (1984). Strip search of female traffic offender upheld by district court, then overturned by appeals court. A woman in Idaho filed suit against the Bonneville County sheriff's office after she was strip searched following arrest for failure to appear and pay parking tickets. Although the district court judge found the circumstances unusual and was sympathetic, he held that it was not unreasonable to search the woman after it became clear that she would not be released on bond prior to her hearing in court. Finding that the policy requiring a strip search of every prisoner processed into the general population of the facility was reasonable, he held that it was not a violation of the fourteenth amendment. On appeal, the higher court reversed the initial decision, finding the practice violated the defendant's fourth amendment rights. On appeal to the United State Supreme Court (See: Ackerman v. Giles, 1985), the appeals court decision remained when certiorari was denied. (Bonneville County Jail, Idaho)

1984

State Court SUICIDE

Kanayurak v. North Slope Borough, 677 P.2d 893 (Alaska Sup. Ct. 1984). Liability for suicide of intoxicated prisoner could result if extra precautions not taken. A state court in Alaska ordered a case to proceed to trial in which the family of a woman who committed suicide in a lockup alleged negligence on the part of police officials. Testimony revealed that the officials were aware that the woman was very intoxicated, and that she had reason to be depressed. Citing a case which held that a jailer must take extra precautions for the safety of a prisoner if he knows the prisoner is intoxicated or insane (Wilson v. City of Kotzebue), the court ordered the case to proceed to trial. (North Slope Borough Lockup, Alaska)

U.S. District Court SEARCHES

Kathriner v. City of Overland, Missouri, 602 F.Supp. 124 (E.D. Mo. 1984). The U.S. District Court held that strip searching a pretrial detainee without reason to believe she possessed contraband or weapons violated her constitutional rights. The plaintiff challenged the blanket policy of strip searching all prisoners, regardless of their length of detention. Corrections officials who conducted the search were granted good faith immunity because they adopted the strip search policy when Bell v. Wolfish was decided and had not been put on notice that their actions were unconstitutional. The court held the city liable for their violations. (Overland City Lockup, Missouri)

U.S. Appeals Court
SEARCHES

Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1984). Female detainees awarded damages for strip searches. Four women who were strip searched at a lockup while awaiting arrival of bail funds brought action against the city. The women were all arrested for misdemeanor charges. The court found the strip search policy which resulted in the searching of prisoners who were not inherently dangerous and were only detained briefly while awaiting bond was unreasonable under the fourth amendment. Also, equal protection was violated as similarly situated males were subjected to only hand searches. Each plaintiff was awarded between \$25,000 and \$35,000 in damages; attorney's fees were also awarded. (Chicago City Lockups)

1985

U.S. Supreme Court
SEARCHES

Ackerman v. Giles, 105 S.Ct. 2114 (1985). U.S. Supreme Court denied review of strip search case; appeals court ruling stands. An important indication of strip search guidelines was provided by the decision of the Court to deny certiorari for Ackerman v. Giles. Ruling: County policy of strip searching all persons admitted to county jail, regardless of severity of charges or whether officials have reasonable suspicion that arrestee is concealing contraband, and unsupported by any indication that strip searches effectively deter smuggling of contraband into jail, violates fourth amendment. A strip search of a person who was arrested for minor traffic offense and was described as cooperative and orderly violated fourth amendment in absence of individualized suspicion that she was carrying contraband or was in any way threatening jail security. 746 F.2d 614 (9th Cir. 1984). (Bonneville County Jail, Idaho)

U.S. District Court
EMPLOYMENT
DISCRIMINATION

Edwards v. Dept. of Corrections, 615 F.Supp. 804 (D. Ala. 1985). An employment discrimination action was brought by a man who was not appointed shift commander at a women's prison. Following a nonjury trial, the district court held that: (1) failure to promote the man to position of shift commander could not be justified on the ground that he would not have been promoted even in the absence of a discriminatory motive; (2) sex was not a bona fide occupational qualification for the position; and (3) the man was entitled to back pay and, if the position were open, reinstatement to the position of shift commander. The employer, who admitted denying the man promotion to shift commander at the women's prison because of his sex but argued that he would still not have been promoted even if there were no discriminatory motive, bore the burden of establishing what it would have done absent a discriminatory motive. The failure to promote the man, who had occupied the position of acting shift commander at the women's prison for nearly one year without any apparent difficulty, to the position of shift commander could not be justified on the ground that being female was a bona fide occupational qualification for that position. (Julia Tutwiler Prison for Women, Alabama)

State Appeals Court
SEARCHES

Rankin v. Colman, 476 So.2d 234 (Fla.App. 5 Dist. 1985). The plaintiff filed a civil rights complaint seeking damages arising from a strip search which was conducted after her arrest for failure to produce her driver's license. The Circuit Court, Orange County, dismissed the complaint, and the plaintiff appealed. The District Court of Appeal held that: (1) a strip search and body cavity search of persons arrested for minor traffic offenses are prima facie unreasonable and an unwarranted intrusion on personal privacy of such persons, at least without some showing of justification by arresting authority, and (2) the complaint which alleged that the plaintiff was forced to undergo strip search procedure even though there was no reason to believe she had concealed contraband or weapons, and that policy, practice and procedure of conducting such searches was approved and authorized by the sheriff was sufficient to state a cause of action under Section 1983. (Orange County Jail, Florida)

1986

U.S. Appeals Court
EQUAL
PROTECTION

Anela v. City of Wildwood, 790 F.2d 1063 (3rd Cir. 1986), cert. denied, 479 U.S. 949. Female detainees confined overnight were denied fourteenth amendment rights. The city could be held liable for conditions. Nine females and one male, ages seventeen to twenty, were arrested at 11:15 p.m. by city police for loud radio playing. The male arrestee was able to post bail and was released. The females were held until 11:00 the following morning. The females filed suit, alleging that their confinement in cells without drinking water, food or mattresses violated their constitutional rights. The federal district court dismissed several counts prior to trial and directed a verdict against the plaintiffs following a trial.

The U.S. Court of Appeals for the Third Circuit held that: (1) the conditions of confinement to which the non-disruptive, non-violent, non-alcoholic women were subjected constituted privation and punishment in violation of the fourteenth amendment; and (2) the city may be held liable under Monell for the conditions of confinement, even if the practices with respect to jail conditions were followed without formal city action, because it appears that they were the norm and had become acceptable standard and practice for the City. (City of Wildwood, New Jersey)

U.S. District Court
EQUAL PROTECTION
PROGRAMMING

Canterino v. Wilson, 644 F.Supp. 738 (W.D. Ky. 1986). Female inmates brought action for relief concerning conditions of their confinement, disparate treatment of men and women incarcerated in state prisons, and denial of vocational training and educational opportunities. After the state was ordered to supply female prison law library facilities equivalent to those provided to male prisoners, increase the amount of nonprogram time the library was open, and provide the equivalent of a half time attorney to assist inmates in areas of demonstrated need, the state moved to alter or amend orders concerning the access to courts issue. The district court held that inmate legal assistance was necessary to provide equal opportunities to female inmates, since past unavailability of legal resources prevented females from gaining legal assistance experience comparable to that of male writ-writers. (Correctional Institution for Women, Kentucky)

U.S. District Court
EQUAL PROTECTION
WORK RELEASE

Olynick v. Taylor County, 643 F.Supp. 1100 (W.D. Wis. 1986). A former prisoner in a county jail brought a civil rights action, claiming that she was a victim of sexual discrimination and was denied due process when she was not allowed to exercise work release privileges during her jail sentence. On cross motions for summary judgment, the district court held that: (1) the plaintiff was denied liberty without due process when she was denied the right to exercise work release privileges because of her transfer to another county jail; (2) the plaintiff's inability to exercise work release privilege outside of county to whose jail she was transferred did not constitute false imprisonment under Wisconsin law; and (3) the sheriff was entitled to qualified immunity because the prisoner's constitutional right to exercise work release privileges was not clearly established.

Changes in condition of confinement, even those with a substantial impact, are not alone enough to invoke due process protections as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him. (Taylor County Jail, Wisconsin)

U.S. District Court
SPECIAL NEEDS
EQUAL PROTECTION

Ruiz v. McCotter, 661 F.Supp. 112 (S.D.Tex. 1986). The Texas Department of Corrections was in contempt of court for failure to afford sufficient single-occupancy cells, in failing to assign housing to prisoners according to their respective custody classifications, in failing to maintain a specified number of personnel, and to deploy staff in the housing areas, in failing to employ a substantial number of health care professionals, in failing to meet the needs of the physically handicapped, in failing to afford prisoners in administrative segregation appropriate housing facilities, and in failing to build and properly equip recreation yards and gymnasiums. On the whole, the court found, TDC had been habitually and inexcusably dilatory in complying with the orders in question. Texas Department of Corrections' alleged change in philosophy to a belief that dormitories provide adequate, secure housing for women prisoners in medium and close custody classifications was not sufficient to require modification of stipulations incorporated in court orders requiring inmates to be housed with inmates of like classification, in light of the fact that certain women inmates had been moved to cell housing, and conflicting testimony regarding appropriateness of dormitory housing for women requiring medium or close custody. (Texas Department of Corrections)

U.S. Appeals Court
CHILDREN

Southerland v. Thigpen, 784 F.2d 713 (5th Cir. 1986). Female prisoner not entitled to breast-feed infant while confined. The United States Court of Appeals for the Fifth Circuit affirmed a district court decision upholding prison regulations which prohibited a female prisoner from breast-feeding her infant child while in prison. The plaintiff was sentenced to prison while pregnant for embezzling \$388. While in prison, she was transferred to a medical center, where she gave birth. While at the medical center, she was able to breast-feed her child. When she was returned to the state prison, she was denied further opportunities to breast-feed the infant. She filed suit, arguing that nursing her child would decrease his chances of getting allergies or diabetes that were in her family history, and that breast-feeding generally aids infants to develop immunities and has positive psychological benefits. The lower court found that discontinuing the breast-feeding would not pose a life threatening situation to the baby. The court noted that the state's interest in deterrence and retribution would be undermined by allowing temporary suspensions for female prisoners, and that the practice would interfere with the maintenance of internal security. (Mississippi State Prison, Parchman)

U.S. Appeals Court
SEARCHES

Ward v. County of San Diego, 791 F.2d 1329 (9th Cir. 1986), cert. denied, 483 U.S. 1020. If no reasonable ground existed for a sheriff's blanket strip search policy, as applied to the plaintiff, the law in May of 1981 was sufficiently clear to subject the sheriff to liability for civil damages under Section 1983. The policy subjected the plaintiff and other minor offense arrestees to a strip search even before an own recognizance release determination was made. Prior to 1981, the court of appeals established that strip searches of arrestees for a minor offense are unconstitutional absent individualized suspicion that the arrestee is carrying or concealing contraband or is suffering from a communicable disease. (Los Colinas Womens Detention Facility, California)

U.S. District Court
RESTRAINTS

Young v. City of Atlanta, 631 F.Supp. 1498 (N.D. Ga. 1986). Use of wrist and ankle cuffs on injured misdemeanor arrestee while receiving treatment at public hospital upheld. A federal district court upheld standard operating procedures of Atlanta, Georgia, which call for the use of wrist and ankle cuffs on injured arrestees who need to go to the hospital before jail. A female attorney had been arrested for violation of minor traffic laws, and had been injured in the accident which led to her arrest. She was taken to a local public hospital for treatment, and consistent with operating procedures of the police agency, she was taken in handcuffs and manacles. She claimed she was humiliated and embarrassed by being in public view for several hours at the hospital in these restraints. The court noted that "...since most detainees treated at Grady [hospital] are brought there directly from the streets, there is no opportunity to screen and classify them to determine the potential for escape and for harm to others." The federal court concluded that police procedures were justified by the security considerations associated with taking a pretrial detainee to a public hospital where emergency treatment was provided in public areas, stating that "...the use of physical restraints, as directed in the procedures, is also intended to allow efficient use of corrections officers and to avoid the expense of building a hospital detention facility or of requiring a corrections officer to accompany each detainee through the frequently lengthy hospital treatment process." (Atlanta, Georgia)

1987

U.S. District Court
SEARCHES

Davis v. City of Camden, 657 F.Supp. 396 (D.N.J. 1987) A suit was filed against county officials by a woman who came to the police station to file a complaint against her neighbors was arrested and strip searched. Police officials found that the woman had several outstanding arrest warrants when they ran an identification check. She was arrested and sent to the Camden County Jail in New Jersey. At the jail a strip search was conducted by a female officer. The policy at the jail was to conduct a strip search on any person arrested who could not post bail. The court found that policy unconstitutional. The suit was filed against the sheriff and the matron who performed the search claiming the strip search was illegal. While the court did not hold the sheriff and matron liable, it did find the county liable because "We believe that a municipality should be held liable under Section 1983 when it officially adopts a policy that subsequently is declared unconstitutional, notwithstanding the fact that the policy was mandated by state law." The court reasoned that, for purposes of determining whether a particular strip search is justified, reasonable suspicion that a particular arrestee is concealing weapons or contraband can arise not only from specific circumstances relating to the arrestee or arrests, but also from the nature of the charged offense. (Camden County Jail, New Jersey)

U.S. Appeals Court
MEDICAL CARE
TRANSSEXUAL

Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987), cert. denied, 108 S.Ct. 311. According to a federal appeals court, there is no reason to treat transsexualism differently from any other psychiatric disorder in determining whether treatment of the condition presents a "serious medical need." Therefore, the plaintiff stated a valid claim under the Eighth Amendment which, if proven, would entitle her to some kind of medical treatment. In addition to stating a serious medical need, the complaint contained allegations indicating that the defendants were deliberately indifferent to that need. Not only did the defendants fail to provide the plaintiff with any kind of medical treatment, not merely hormone therapy, for her gender dysphoria, but one doctor allegedly ridiculed the plaintiff about her condition. (Indiana State Reformatory in Pendleton, Indiana State Prison)

U.S. District Court
TRANSFER
EQUAL PROTECTION
PROGRAMMING

Pitts v. Meese, 684 F.Supp. 303 (D. D.C. 1987). Female inmates who were incarcerated in a federal facility because of a lack of facilities within the District of Columbia filed an action challenging the constitutionality of such confinement. The federal district court held that female offenders failed to establish that programs at the federal facility were inferior to programs provided at the District of Columbia facility for male offenders and although the location of the facility posed certain hardships on the female offenders, it did not violate their constitutional rights. (District of Columbia)

1988

State Appeals Court
MEDICAL CARE

Calloway v. City of New Orleans, 524 So.2d 182 (La. App. 4 Cir. 1988). The mother of a prematurely born infant brought a wrongful death action against the sheriff of the jail in which she was held prior to the birth. She also sued the hospital. A lower court found the sheriff and hospital liable and awarded the mother \$150,000 in damages. On appeal, the court reduced the damages award to \$30,000, cited the mother's neglect to seek out and carry out proper medical care and contracting syphilis, as well as her reluctance to see the child. According to the court, in all negligence cases the responsible party must have breached a duty which encompasses a foreseeable risk of harm to the plaintiff. While the court ruled that a jail corpsman should not be held to the same standard of care as a medical doctor,

his standard is above that of an ordinary layman. When determining an award of damages for the wrongful death of a baby, the determination is predicated on the bond between parent and child, and presumably the longer a child lives, the greater parental bond and greater loss upon a child's death. Finally, when a damage award is excessive, the reviewing court's function is to lower it to the highest reasonable amount. (Orleans Parish Prison)

U.S. Appeals Court
ACCESS TO COURT
COMMUNICATION
VISITS

Coleman v. Turner, 838 F. 2nd 1004 (8th Cir. 1988). An inmate and her future husband filed a lawsuit against the Correctional Center's superintendent and a corrections officer. They alleged that officials had violated their right to send and receive mail, had harassed them, had violated their right of access to the courts, and had denied the future husband the opportunity to visit and punished him in a cruel and unusual manner. In a jury trial, the court agreed with the plaintiffs on the claim of retaliation, but the court denied a request for an injunction against future harassment. The court then ruled that since the plaintiffs acted as their own attorney, they were not entitled to attorney's fees under 42 U.S.C. Section 1988; however, they may be able to recover costs, which would be considered during future court appearances. (Renz Correctional Center)

U.S. District Court
SEARCHES

Polk v. Montgomery County, MD, 689 F.Supp. 556 (D. Md. 1988). A detainee brought a civil rights action against a county and matron for having been subjected to an unlawful visual strip search, seeking \$2.7 million in damages. A jury awarded her \$1. She appealed, seeking an additional \$113,107 for attorney's fees, rejecting a \$31,000 settlement offer by the county. Because the plaintiff had refused to join a class action suit, Smith v. Montgomery County, 643 F.Supp. 435 (D. Md. 1986) the court concluded that she was in search of a greater monetary award, ruling that such an award would be unjustified because of the nominal recovery and the opportunity which the plaintiff had to join a successful class action on identical issues. The court awarded her \$4,651.86 in attorneys' fees. (Montgomery County Detention Center, Maryland)

U.S. District Court
PRIVACY

Wilkes v. Borough of Clayton, 696 F.Supp. 144 (D.N.J. 1988). An arrestee brought an action against the Borough, chief of police, and two police officers, for violation of her fourth amendment rights following an arrest. Both parties moved for summary judgment. The district court found that the arrestee's fourth amendment rights were affected by the officer's maintenance of visual observation over the arrestee while the arrestee attended to the hygienic needs of changing a sanitary napkin, and the Borough's policy of subjecting every arrestee to the humiliation of visual oversight while using the bathroom facilities was unreasonable, and the application of that policy to the arrestee, deprived her of rights secured by the fourth amendment. The fourth amendment does not prohibit all government intrusions into citizens' privacy interest, but only those intrusions found to be unreasonable. The fourth amendment forbids the police from visually observing arrestees using bathroom facilities unless the police have a reasonable suspicion that the arrestee will harm herself if allowed to defecate, urinate, or change a sanitary napkin or tampon behind a closed stall or bathroom door; thus, only when an arrestee's behavior, emotional or physical condition, or past record of such harm are such as to engender a reasoned and articulable basis for maintaining a direct visual oversight at all times is viewing of an arrestee's bathroom use constitutionally justifiable. The application of the policy to a driver arrested on a charge of driving under the influence, refusal to take a breath test, and disorderly conduct deprived her of rights secured by the fourth amendment. (Clayton Police Station, New Jersey)

1989

U.S. Appeals Court
CLASSIFICATION
TRANSFER

Baraldini v. Thornburgh, 884 F.2d 615 (D.C. Cir. 1989). A federal district court's determination that female inmates' first amendment rights were being violated was appealed by the defendants. Reversing and remanding the decision of the lower court, the appeals court found that there was sufficient merit to the placement of the inmates in the Federal Bureau of Prisons' highest security confinement institution for women. It was shown that the female inmates had associated with gangs and had access to dangerous weapons. They had helped in prison escapes, and had personally taken part in violent and criminal activities of those groups before their federal incarceration. It was also determined by the court that placement of inmates in the stated institution "solely" because of their "subversive statements and thoughts" was clearly erroneous. While inmates have a constitutional right to hold violent or revolutionary views and to maintain memberships in revolutionary organizations, prison administrators are not required to ignore those views and memberships when assessing dangers of their escapes from custody with outside help from those who hold like views and/or memberships. (Federal Correctional Institution, Lexington, Kentucky)

U.S. District Court
BREAST-FEEDING
VISITS

Berrios-Berrios v. Thornburg, 716 F.Supp. 987 (E.D. Ky. 1989). A lawsuit was filed by a female inmate to challenge the refusal of prison officials to permit her to breast-feed her child. She moved for a preliminary injunction allowing her to breast-feed her child during normal visitation hours, to store breast milk in a refrigerator, and to compel the defendants to make arrangements for the delivery of the breast milk to the child's caretaker. The court found that the need for immediate resolution of the inmate's request to be allowed to breast-feed her child during normal visitation hours and to store the breast milk negated requirements to exhaust administrative remedies, and that the inmate was entitled to a preliminary injunction allowing her to breast-feed her child during regular visitation periods. A substantial threat existed that the absence of an injunction would irreparably injure the inmate's ability to breast-feed her child and the inmate and her child would unnecessarily be deprived of the beneficial effects of breast-feeding; the defendants failed to allege any harm. However, the court ruled that the inmate's interest in breast-feeding her child with milk stored in a refrigerator was outweighed by the government's compelling interest arising out of the need for security checks, the desire to avoid negligence claims, and the cost and burden of providing the refrigerators and a system for the storage and delivery of the milk to caretakers. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
EQUAL PROTECTION
PROGRAMMING

Canterino v. Wilson, 869 F.2d 948 (6th Cir. 1989). An action was filed challenging the denial of equal protection rights and the conditions of confinement in an institution for women. The U.S. District Court enjoined the enforcement of a statute which lists six categories of inmate in all Kentucky prisons who are ineligible for work release programs and the defendants appealed. The court of appeals found that the prisoners did not have a protected liberty interest in a particular classification, or in the study and/or work programs. The prisoners failed to prove that the denial of study and work release to members of their class was gender-based discrimination on its face; both men and women were included in the class of people who could be denied study and work release. Female prisoners failed to establish proof necessary to shift the burden of proof to prison and prison officials to show a legitimate justification for supposed discrimination; the court could not discern whether female prisoners were claiming that more women were unfairly classified and therefore unfairly denied these opportunities, or whether more women in the institution had committed serious crimes than men who were confined to similar institutions. (Kentucky Correctional Institute for Women)

U.S. District Court
ABORTION
MEDICAL CARE

Gibson v. Matthews, 715 F.Supp. 181 (E.D. Ky. 1989). A female prisoner sued prison officials in both their individual and official capacities based on allegations that while incarcerated she was not provided access to abortion facilities as she had requested. On the defendants' motion for summary judgment, the U.S. District Court found that claims brought against the defendants in their official capacities were barred by sovereign immunity, and the mere negligence of the prison officials in denying the prisoner access to abortion facilities did not constitute a denial of substantive due process rights for the purposes of the prisoner's damage claims against officials in their individual capacity. The court stated that the conduct alleged by the plaintiff amounts "at best to negligence," and the mere negligence of prison officials in denying the prisoner access to abortion facilities based on an incorrect estimation of her due date was not sufficiently egregious to constitute a violation of her substantive due process rights or the eighth amendment. Therefore, the prisoner could not recover money damages from the prison officials in their individual capacities. (Federal Correctional Institution, Lexington, Kentucky)

U.S. District Court
EQUAL
PROTECTION
SPECIAL NEEDS

Langley v. Coughlin, 709 F.Supp. 482 (S.D.N.Y. 1989). Female inmates brought a class action against correctional authorities alleging violations of their eighth amendment rights arising from conditions of confinement in a "solitary" unit. Correctional authorities moved for summary judgment on the grounds of qualified immunity. The district court denied the motion for summary judgment, finding that the correctional authorities responsible for designing and implementing the inmate programs were not entitled to qualified immunity against the claims that female inmates were not provided with medical treatment and that mentally balanced inmates were housed with inmates who suffered from chronic mental illness. The Commissioner of the New York State Department of Correctional Services could be held liable in the Section 1983 suit to the extent he failed to develop and implement programs and policies regarding the treatment of mentally ill inmates or delegated that responsibility to others whom he then failed to supervise adequately. The plaintiffs in this class action are inmates at Bedford Hills Correctional Facility ("BHCF"), who were housed in Building 118 from 1981 through August 1987. In Building 118 (also known as "solitary" or "Special Housing Unit" ("SHU")), plaintiffs were locked in their cells up to 23 hours of each day, with one hour for recreation. Those plaintiffs suffering from chronic mental illness ("mentally disordered women") were allegedly kept in excessive isolation and denied adequate mental health care in violation of their rights under the eighth and fourteenth amendments of the U.S. Constitution. The mentally disordered women are identifiable by

their assaultive behavior and the marked deterioration they exhibited while in confinement. Those plaintiffs not suffering from chronic mental illness ("non-mentally disordered women") maintain that the conditions of their confinement subjected them to cruel and unusual punishment, in violation of the eighth amendment. Throughout the relevant period, the plaintiffs were subjected to noxious odors, noise, and danger as the mentally disordered women engaged in acts of self-destruction, arson, and assaultive behavior. Several mentally disordered women routinely spread feces and urine throughout the unit, flooded the unit with sewerage, and yelled and screamed day and night. These occurrences were frequent, rather than merely an isolated incident. The plaintiffs allege that all of the defendants were deliberately indifferent to their mental health needs. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
EQUAL
PROTECTION
TRANSFER
DISCRIMINATION

Pitts v. Thornburgh, 866 F.2d 1450 (D.C. Cir. 1989). Female D.C. Code offenders filed an action challenging the constitutionality of their incarceration at federal facilities due to the lack of D.C. facilities. The U.S. District Court granted the motion for summary judgment brought by the federal and D.C. defendants, and the female offenders appealed. The appeals court affirmed the decision and found that incarcerating female offenders further from D.C. than male offenders did not violate equal protection. Incarcerating long-term D.C. female offenders at a federal institution in West Virginia did not violate equal protection, even though similarly situated male offenders were incarcerated in D.C. facilities closer to D.C.. The differing treatment was based on the need to respond to severe overcrowding in D.C. facilities, not on outmoded conceptions of the role of women in contemporary society. The court concluded that "not a shred of evidence suggests that the classification springs from indifference, bias or archaic notions of women's role in society." (Federal Correctional Institution, Alderson, West Virginia)

1990

U.S. District Court
MEDICAL CARE
ABORTIONS

Bryant v. Maffucci, 729 F.Supp. 319 (S.D.N.Y. 1990). An inmate brought a Section 1983 action against the commissioner of the county department of corrections, the warden, the assistant wardens, and director of the correctional health services to recover for the inability to obtain an abortion in her 24th week of pregnancy. The defendants moved for summary judgment. The district court found that the policy for dealing with an inmates' abortion requests was constitutional and the assistant wardens and the director were not deliberately indifferent to the inmate's right of privacy.

The assistant wardens were not deliberately indifferent to the privacy right of an inmate who was unable to obtain an abortion when gestation, determined for the second time, was increased and set at 24 weeks. Although the assistant wardens were responsible for maintaining access to medical care, they were not trained or authorized to make medical decisions and one warden testified that she was not privy to medical decisions or records.

The correctional facility's procedures for inmates' abortion requests were not deliberately indifferent to a privacy right of an inmate who was unable to obtain an abortion. The request for an abortion was relayed to correctional health services and acted upon in sufficient time to schedule an appointment within what appeared to be 24 weeks. (Westchester County Correctional Facility, New York)

U.S. District Court
SEARCHES
PRIVACY

DiLoreto v. Borough of Oaklyn, 744 F.Supp. 610 (D. N.J. 1990). A detainee who was subjected to a strip search brought a civil rights action against police officers. On cross motions for summary judgment, the district court found that a female officer's observation of the female detainee's urination, absent any particularized suspicion that the detainee might harm herself or be in possession of contraband, violated the detainee's civil rights. (Oaklyn Police Station, New Jersey)

U.S. District Court
EQUAL
PROTECTION

Doe v. Sparks, 733 F.Supp. 227 (W.D. Pa. 1990). A female inmate of a county prison brought an action challenging the prohibition on visitation by boyfriends or girlfriends of homosexual inmates. The U.S. District Court found that the rule bore a rational relation to valid goals but its effectiveness was so undercut by other factors as to render it constitutionally infirm. According to the court, if Pennsylvania law holds that it is beyond the power of the Pennsylvania legislature to prohibit adult private consensual homosexual conduct, the federal equal protection clause requires at least a showing of a rational relationship to a permissible end for any governmental policy which requires the disparate treatment for persons who are not seeking to engage in legally permissible sexual conduct but merely to acknowledge the existence of a homosexual affectional or romantic relationship. The prohibition of even consensual homosexual activity is a practical necessity of the prison administration, whether for health or discipline reasons. Concerns for abuse of inmates who are identified as homosexuals and for the protection of discipline and health were valid concerns of prison officials, and the prison policy against visits by the boyfriends or girlfriends of homosexual inmates bore a rational relation to preventing those ills, but the effectiveness of that policy to deal with those ills was so undercut by other factors as to render it constitutionally infirm. (Blair County Prison, Pennsylvania)

U.S. Appeals Court
EQUAL PROTECTION

Jackson v. Thornburgh, 907 F.2d 194 (D.C. Cir. 1990), affirming, 702 F.Supp. 9 (D.D.C. 1988). Female prisoners who were housed in federal prisons after being convicted in District of Columbia courts sought a writ of habeas corpus and challenged the constitutionality of the District of Columbia Good Time Credits Act. The defendants moved for a summary judgment. The U.S. District Court granted the defendants' motion for a summary judgment, and the female prisoners appealed. The district court found that the Act, which reduces the minimum sentence of prisoners in district prisons, did not violate the equal protection rights of the female prisoners, even though long-term female offenders are housed in a federal facility and are not covered by the Act. (District of Columbia Penal Facilities)

U.S. District Court
MEDICAL CARE
TRANSSEXUAL

Phillips v. Michigan Dept. of Corrections, 731 F.Supp. 792 (W.D. Mich. 1990). An alleged transsexual inmate brought an action against the Department of Corrections and prison officials under Section 1983, seeking an opportunity to continue estrogen treatment. On the inmate's motion for preliminary injunction, the district court found that the inmate suffered from a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment, whether proper diagnosis of the inmate's condition was transsexualism or gender identity disorder of adolescence or adulthood, nontranssexual type, and the inmate was entitled to a preliminary injunction ordering the correctional officials to provide her with estrogen therapy. The institution had denied the inmate medical care through intentional conduct and deliberate indifference, the court ruled. The inmate had been the subject of ridicule and offensive remarks at the hands of the prison physician, and the conduct of the prison officials actually reversed the therapeutic effects of the previous treatment. Psychological disorders of prison inmates may constitute a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment. Thus, the general principles and standards of the eighth amendment apply to the provision of mental health care. (Riverside Correctional Facility, Michigan)

1991

U.S. District Court
SEARCHES

Allen v. Board of Com'rs of County of Wyandotte, 773 F.Supp. 1442 (D.Kan. 1991). An arrestee, charged with a misdemeanor traffic offense, sued the county sheriff's department, the county sheriff, a sergeant, and deputies alleging that the defendants battered and falsely imprisoned her and subjected her to a strip search in violation of the federal constitution. The defendants moved for summary judgment. The U.S. District Court found that the strip search of the arrestee was unreasonable under the Fourth and Fourteenth Amendments absent any showing of necessity to confine the arrestee with other prisoners, but the five hour detention was not unreasonable under the Fourth Amendment. The deputy who conducted the strip search was not entitled to qualified immunity because the strip search of traffic offenders without some level of suspicion that they were harboring drugs, contraband or a weapon was pre se unreasonable at the time of the plaintiff's arrest. The state law claims for battery, negligence per se, false and negligent imprisonment, and negligent training and supervision and adoption of policies fell within exceptions to the Kansas Tort Claims Act. (Wyandotte County Sheriff's Department, Kansas)

U.S. Appeals Court
ABORTION
MEDICAL CARE

Bryant v. Maffucci, 923 F.2d 979 (2nd Cir. 1991), cert. denied, 112 S.Ct. 152. An inmate brought a Section 1983 action against several officials to recover for the inability to obtain an abortion in the 24th week of her pregnancy. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court found that the prisoner failed to establish that the delay in scheduling the abortion was a result of anything more than mere negligence on the part of the prison authorities. She was given a sonogram within one day of her arrival at the Correctional Facility, and once the request for an abortion was received, it was scheduled immediately at a time believed to be the earliest available date. The court also found that the prison's policy for dealing with inmates' abortion requests was constitutional. The Correctional Facility's procedures for an inmate's abortion requests were not deliberately indifferent to the privacy right of this inmate, who was unable to obtain an abortion when gestation was determined for a second time, was increased, and was set at 24 weeks; there was no evidence of any similar incident at the facility, and it appeared from uncontested facts that normal procedure guaranteed female inmates at the facility their right to choose to terminate their pregnancies. (Westchester Corr. Facility, Womens' Division)

U.S. District Court
PRIVACY
TRANSSEXUAL

Crosby v. Reynolds, 763 F.Supp. 666 (D. Me. 1991). A female prisoner at a county jail brought a Section 1983 action against jail officials for allegedly violating her privacy rights by placing her in the same cell as a transsexual male prisoner. On the defendants' motion for summary judgment, the district court found that correctional officials were entitled to qualified immunity on the inmate's claims. Expert medical opinion informed the jail officials that housing the transsexual inmate in the female population best satisfied the

inmate's unique psychological needs and there was no risk to the female inmates. The officials were notified that the inmate, who had received hormonal treatments and developed breasts, but had not yet undergone a sex change operation, would not be safe, physically or psychologically if placed with male inmates. According to the court, reasonable officials in their shoes would not understand that what they did violated the constitutional rights of the plaintiff, therefore, the defendants were entitled to qualified immunity on the plaintiff's charge that her constitutional right to privacy was invaded. (Penobscot County Jail, Maine)

U.S. District Court
FAILURE TO
PROTECT

Flechsig v. U.S., 786 F.Supp. 646 (E.D. Ky. 1991). An inmate brought an action against the Federal Bureau of Prisons, alleging that she had been sexually assaulted by a corrections officer in the course of being transported to a medical appointment. The Bureau moved to dismiss. The district court granted the motion, finding that the federal prison warden did not have reason to anticipate that the corrections officer would sexually assault the inmate, thus, the warden did not breach a duty to keep the inmate from harm. The assault did not occur during the course of search, seizure, or arrest, and the officer was not acting within the scope of his employment when he committed the assault. (Federal Correction Institution, Lexington, Kentucky)

U.S. Appeals Court
ABORTION

Gibson v. Matthews, 926 F.2d 532 (6th Cir. 1991). A prisoner brought a civil rights suit alleging that prison officials violated her constitutional rights in not enabling her to have an abortion. The U.S. District Court granted summary judgment for prison officials, and the prisoner appealed. The court of appeals found that the officials were entitled to qualified immunity from the prisoner's claim as it was not clearly established at the time of the alleged actions that the Constitution required federal prison employees to facilitate prisoners in their requests for abortions, and there was no indication that officials did anything other than exercise their honest medical judgment. (Harris County Jail, Texas)

U.S. Appeals Court
PROGRAMMING

Glover v. Johnson, 934 F.2d 703 (6th Cir. 1991). Action was brought challenging the lack of educational programs for female inmates. The U.S. District Court found a constitutional violation, and then appointed an administrator. The court of appeals vacated, and on remand, the U.S. District Court found prison officials in contempt and they appealed. The court of appeals found that the prison officials were properly found in contempt for failing to comply with prior orders requiring them to provide female inmates with educational programs comparable to those offered to male inmates, based on the finding that the prison officials had not taken all reasonable steps to comply, but the prison officials should not have been held in contempt for failing to comply with certain measures which were never included in the court's order. It was also found that the district court properly ordered the prison officials to select a qualified special administrator to develop a plan to remedy constitutional violations with respect to training offered to female inmates and properly announced appointment of a monitor to periodically report on the administrator's progress, despite the claim that the orders were excessively intrusive, in view of noncompliance with prior orders by prison officials. (Michigan Department of Corrections)

U.S. Appeals Court
TRANSFER

Inmates of Suffolk County Jail v. Kearney, 928 F.2d 33 (1st Cir. 1991). A class of inmates sued a sheriff, claiming that the sheriff's refusal to transfer female prisoners to a newly constructed prison built in accord with a consent decree violated that decree. The U.S. District Court ordered the sheriff to transfer female prisoners to the jail, and the sheriff appealed. The court of appeals found that the decree required the sheriff to house both males and females in the new jail. The sheriff could not use the new jail to house only men, even though the sheriff would be required to set aside an entire cell block for women, whether or not he could find enough female prisoners to fill that block. (Suffolk County Jail, Massachusetts)

U.S. District Court
SUICIDE

Kocienski v. City of Bayonne, 757 F.Supp. 457 (D. N.J. 1991). An administratrix of a pretrial detainee's estate brought a civil rights action against a city and city police officers based on the detainee's suicide death. On the officer's motion for summary judgment, the U.S. District Court found that even if the police officer was aware of the detainee's suicidal tendencies, the officer's failure to communicate those tendencies to other officers did not constitute deliberate indifference to the detainee's needs in violation of due process; any failure by the officer to communicate suicidal tendencies to other officers constituted negligence only. The police officers' failure to assure that the detainee's pantyhose were removed after becoming aware that she was wearing pantyhose did not constitute deliberate indifference to the detainee's psychological needs because no evidence indicated that the officers had knowledge of the detainee's suicidal tendencies. After it was determined that police officers were not deliberately indifferent to the pretrial detainee's needs when they failed to prevent her suicide, the city could not be held separately liable for failing to train its police officers. (Bayonne Municipal Jail, New Jersey)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
FAILURE TO
PROTECT

Marsh v. Arn, 937 F.2d 1056 (6th Cir. 1991). An inmate at a women's prison who was attacked and severely beaten by a fellow inmate sued various prison officials. The U.S. District Court granted summary judgment for four of the defendants but denied judgment for a fifth defendant. Cross appeals were taken by the plaintiff and the fifth defendant. The court of appeals found that evidence was not sufficient to establish deliberate indifference on the part of any of the defendants, and thus all were entitled to qualified immunity. Although a cause of action for failure to protect an inmate from an attack by another inmate under the deliberate indifference standard of liability was established by the time of the assault on the inmate in 1985, the right of the inmate to be segregated due to threats of a roommate had not yet been sufficiently defined in the Sixth Circuit to be considered "clearly established" so as to defeat the prison official's qualified immunity defense. (Ohio Reformatory for Women)

U.S. District Court
EQUAL PROTECTION
EXERCISE
PROGRAMMING
VISITS
ACCESS TO COURT

McCoy v. Nevada Department of Prisons, 776 F.Supp. 521 (D. Nev. 1991). Female prison inmates brought civil rights actions alleging violation of equal protection based on disparate treatment of male inmates. On motion of defendants for summary judgment, the district court found that there were issues of fact precluding summary judgment on claims of disparate educational, recreational and vocational training programs, privileges with respect to vocational and educational classes and visitors, and conditions including law libraries, maintenance of buildings, and provision of clothing. (Nevada Women's Correctional Center)

U.S. District Court
AIDS
PRIVACY

Nolley v. County of Erie, 776 F.Supp. 715 (W.D.N.Y. 1991). A former inmate infected with human immuno-deficiency virus (HIV) brought an action against a correctional facility and various facility administrators, alleging constitutional and statutory violations in connection with her treatment. The district court found that evidence established that red stickers placed on the inmate's possessions disclosed her confidential HIV-related information to staff and inmates of the correctional facility who were not authorized to receive such information, in violation of New York State Public Health Law. In addition, prison inmates are protected by a constitutional right to privacy from unwarranted disclosure of their HIV status. (Erie County Holding Center, New York)

U.S. District Court
EXCESSIVE FORCE

Valdez v. Farmon, 766 F.Supp. 1529 (E.D. Cal. 1991). A prison inmate brought a civil rights action alleging that a prison official used unnecessary and wanton force in connection with an ordered strip search. On motions for, inter alia, summary judgment, the district court found that the inmate's allegations that prison officials used excessive force against her, allegedly using an electronic stun gun in connection with threatening the inmate to comply with a strip search, were properly analyzed under the Eighth Amendment, rather than the Fourth Amendment, as all of the allegations concerning compensable injury were directed at the means by which the search was undertaken, not the propriety of the search itself. Furthermore, the inmate's allegation that prison officials use of force against her would not be analyzed under the Fourteenth Amendment due process clause as unjustified deprivation of liberty, as such analysis would have been redundant where the case was analyzed under the Eighth Amendment. (Northern California Women's Facility, Stockton, California)

1992

U.S. District Court
MEDICAL CARE
PROGRAMMING

Arnold on Behalf of H.B. v. Lewis, 803 F.Supp. 246 (D. Ariz. 1992). A prisoner's guardian ad litem filed a Section 1983 action for the prisoner and others similarly situated for an injunction and declaration that prison officials' deliberate indifference to mental health needs was unconstitutional. The district court found that the prison officials' actions constituted deliberate indifference to serious medical needs in violation of the Eighth Amendment. The officials placed the prisoner in lockdown as punishment for symptoms of her paranoid schizophrenia as an alternative to providing mental health care. The officials knew that the mental health program at the facility was deficient and were aware that the prisoner's mental condition deteriorated when she was locked down in a small cell without treatment, but failed to correct the grossly inadequate psychiatric care. Prison officials' deliberate indifference to the mentally ill prisoner's serious medical needs justified injunctive relief ensuring that she received appropriate treatment. (Santa Maria Unit at Perryville Prison, Arizona)

U.S. District Court
SUICIDE

Bragado v. City of Zion/Police Dept., 788 F.Supp. 366 (N.D. Ill. 1992). An estranged husband of a detainee who committed suicide while in custody brought action on behalf of himself and the detainee's estate against officials alleging violation of civil rights. The defendants brought a motion for summary judgment. The district court found that material issues of fact as to whether police had actual or constructive knowledge of the detainee's suicidal condition and whether the response to that condition constituted "deliberate indifference" precluded granting summary judgment in favor of the defendants. There was substantial evidence that the detainee suffered from psychological problems of

which the police were aware, or should have been aware. Police reports of two incidents involving the detainee include statements by her former boyfriend and others that she threatened to commit suicide and may have attempted to do so. When she was arrested, she had cuts on her wrists and had just written a note stating her "life is over now." The police were clearly aware of both the cuts and the note, and the detainee threatened to commit suicide repeatedly while she was in her cell. The police consultation with the State's Attorney's office and the decision to hold the detainee overnight, apparently for her own safety, also suggest that the police considered her suicidal. The detainee was not constantly supervised, and it was clearly established at the time of the arrest that the "deliberate indifference" standard applied to the handling of suicidal pretrial detainees, and that failure to take special precautions toward such detainees could violate that standard. (Zion, Illinois, Police Station)

U.S. Appeals Court
MEDICAL CARE

Brown v. Wallace, 957 F.2d 564 (8th Cir. 1992). A female inmate brought a Section 1983 action against a prison warden and a director of health services. The U.S. District Court dismissed the complaint and denied a motion to amend, and the inmate appealed. The magistrate judge could conclude that the warden and the director for the prison's health care provider were not indifferent to the inmate's medical needs; the warden investigated and responded to each complaint of the inmate, and the director responded to the inmate's correspondence and attempted to meet with her to discuss complaints. (Women's Unit, Arkansas Department of Corrections)

U.S. District Court
EQUAL PROTECTION
HANDICAPPED

Clarkson v. Coughlin, 783 F.Supp. 789 (S.D.N.Y. 1992). A deaf inmate filed a civil rights action against a prison, and other hearing impaired inmates sought to intervene. Prison officials filed motions to dismiss and to transfer. The inmate's action against prison officials for failure to accommodate her hearing impairment was rendered moot by the inmate's release on parole but it did not require a dismissal of the class action; other hearing impaired inmates had sought to intervene, indicating a strong likelihood that some other named plaintiff existed who would be able to represent the putative class adequately. A female inmate who was ineligible for enrollment in a unit created to provide resources for hearing impaired inmates at the male prison would be permitted to intervene in the class action, even though her hearing loss was not as severe as the named plaintiff's deafness; the hearing impaired inmate was incarcerated at a facility that provided no services for hearing impaired inmates and she had faced the possibility of disciplinary charges for failure to comply with instructions that she could not hear. (NY State Dept. of Corr. Services)

U.S. District Court
SEARCHES

Cottrell v. Kaysville City, Utah, 801 F.Supp. 572 (D. Utah 1992). A motorist brought a civil rights action against a city, police officer, and employees of a county jail for violations of her constitutional rights after she was strip searched in jail. The defendants moved for summary judgment. The district court granted the motion. The court found that the strip search of the female motorist in the county jail by female jail personnel did not violate her Fourth Amendment rights. It was reasonable for a police officer to believe that the strip search was appropriate to detect whether drugs were concealed on the motorist's body, where her actions suggested that she was probably under the influence of drugs or alcohol, her breath did not smell of alcohol, and no drugs were found in her vehicle. (Davis County Jail, Utah)

U.S. Appeals Court
FAILURE TO
PROTECT
PROTECTION FROM
HARM

Hardin v. Hayes, 957 F.2d 845 (11th Cir. 1992). The estate of a female arrestee who died while in city police custody and temporarily housed in the county jail brought a Section 1983 action against local officials. The U.S. District Court denied the officials' motions for summary judgment, and appeal was taken. The court of appeals found that the officials lacked sufficient involvement to be held liable for the arrestee who died accidentally after swallowing soap because on the day before the incident an officer had ordered the city, for whom the county was providing facilities for part of the time, to take the arrestee away. It was noted that she had injured herself banging her head on bars, and on the day in question, the official had observed the arrestee pacing in her partially flooded cell with excrement on the floor. (Etowah County Jail, Alabama)

U.S. District Court
SEARCHES

Martin v. Swift, 781 F.Supp. 1250 (E.D. Mich. 1992). A female civil rights plaintiff brought a Section 1983 action against a city, an officer, and a police chief arising out of an alleged unconstitutional pat-down search by a male police officer. On the defendants' motions for summary judgment, the district court found that the plaintiff failed to state an actionable Section 1983 claim against the city based on a policy of allowing male police officers to conduct pat-down searches of females accused of misdemeanors as the complaint cited only a single incident of unconstitutional activity, and, thus, did not allege that the pat-down search was conducted pursuant to "policy" of the city. In addition, the plaintiff failed to state an actionable Section 1983 claim against the city police chief based on the fact that, as chief, he had failed to properly supervise and train police personnel and, thus, was responsible for the male police officer who conducted the pat-down search

of the plaintiff in an allegedly unconstitutional manner. There were no allegations of a history of abuse during pat-down searches by city police officers or a history of abuse by the officer who conducted the search. However, a material issue of fact as to whether the male police officer conducted the pat-down search of the female misdemeanor suspect in an unconstitutional manner precluded granting summary judgment to the officer. When law enforcement officers act in an objectively reasonable manner, they will be entitled to qualified immunity, and the issue before the court was whether a reasonable officer would have acted similarly to the defendant officer during the pat-down search. (Royal Oak Police Department, Michigan)

U.S. Appeals Court
PRIVACY

Sepulveda v. Ramirez, 967 F.2d 1413 (9th Cir. 1992). A parolee filed a Section 1983 civil rights suit against parole officers alleging violation of her right to bodily privacy. The officers moved for summary judgment on the grounds of qualified immunity. The U.S. District Court denied the motion and the officers appealed. The appeals court, affirming and remanding, found that whether a male parole officer violated the female parolee's constitutional right to bodily privacy was a fact question precluding summary judgment on the issue of whether the officer was entitled to qualified immunity where the officer allegedly walked into the stall where the parolee was partially unclothed while collecting a urine sample for drug testing. (California)

U.S. District Court
MEDICAL CARE

Unterberg v. Correctional Medical Systems, Inc., 799 F.Supp. 490 (E.D. Pa. 1992). An inmate brought a federal civil rights action against a county, medical services company, and a correctional official. The defendants moved for summary judgment. The district court granted the motion, finding that the inmate failed to establish deliberate indifference concerning medical treatment she received at the correctional facility, for purposes of a civil rights cause of action. From the day the inmate complained that she was not feeling well, she received medical attention on a daily basis until she was transferred to a hospital, and the defendants were not shown to have had actual knowledge of easily preventable, impending harm. The inmate failed to establish that policymakers of the county or medical systems company exhibited requisite deliberate indifference on the theory that the inmate's injuries were caused by policy or custom of the county and the company in failing to adequately recruit, train, and supervise personnel who treated the medical needs of the inmates. (Lehigh County Women's Correctional Facility)

1993

U.S. District Court
EQUAL PROTECTION
MEDICAL CARE

Casey v. Lewis, 834 F.Supp. 1477 (D.Ariz. 1993). A class of inmates sued Arizona prison officials based on allegations of deliberate indifference to serious medical, dental, and mental health care needs and alleged that female prisoners' equal protection rights were violated with regard to mental health care services. The district court found that the treatment available to seriously mentally ill inmates in the prison system violated the Eighth Amendment. In addition, the unequal treatment of male and female inmates violated the female inmates' equal protection rights in addition to violating their Eighth Amendment rights. The court found that an injunction was appropriate in light of showing that, as a result of economic conditions, the prison system would continue to lock down inmates as an alternative to providing appropriate mental health care. (Arizona Department of Corrections)

U.S. Appeals Court
MEDICAL CARE

Gay v. Turner, 994 F.2d 425 (8th Cir. 1993). A state inmate brought a civil rights action against prison officials alleging she was involuntarily detained at a state mental hospital and forcibly injected with antipsychotic drugs in violation of due process. The U.S. District Court granted summary judgment for the officials, and the inmate appealed. The court of appeals, affirming the decision, found that the temporary transfer of the inmate to a state mental hospital did not constitute a major change in conditions of confinement that required procedural protections. At the time prison officials acted in administering forced medications to the inmate, the inmates' rights to avoid unwanted administration of antipsychotic drugs were not sufficiently clear, and the officials were entitled to qualified immunity. (Fulton State Hospital, Missouri)

U.S. District Court
SUICIDE

Hare v. City of Corinth, Miss., 814 F.Supp. 1312 (N.D. Miss. 1993). The estate of a female detainee who committed suicide while in jail sued city and custodial officials, under Section 1983 and the Mississippi Wrongful Death Act. Cross motions for summary judgment were made. The district court found that material issues of fact, precluding summary judgment, existed as to whether the detainee displayed a particular vulnerability to suicide, triggering obligations of custodial officers to provide special care. The officer in charge had made sure that the detainee did not have shoe laces or a belt, had considered removing the blanket that the detainee later tore up to fashion a noose but decided she lacked the strength to use the blanket as a suicide device, and had asked that she be watched by a dispatcher. However, the detainee was in jail for the first time, was under the influence of a chemical drug, and exhibited severe mood swings including distraught

and frantic activity. In addition, she sat in a fetal-type position during one interview, attempted to destroy a videotape of her interview and said she would kill herself if she had to stay in jail another night. Although the detainee was chemically dependent, undergoing withdrawal and depression, had made a suicide threat and exhibited unstable behavior, she was placed alone in a cell not allowing full-time observation. Material issues of fact existed on the question of whether the municipality had acquiesced in policy or custom of inaction on the question of suicide prevention; there had been another suicide in the same jail three months previously, and there was no attempt made to adopt policies or procedures to prevent subsequent suicides. However, the evidence did not support a claim of wrongful death involving the jail suicide; the officer's act of placing the detainee in jail overnight could not have caused the development of an irresistible impulse leading the detainee to take her own life. (Corinth Jail, Mississippi)

U.S. Appeals Court
SEARCHES

Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993). Female inmates brought an action challenging the constitutionality of prison regulations permitting cross-gender clothed body searches. After granting rehearing en banc, the court of appeals found that the prison policy requiring male guards to conduct random, nonemergency, suspicionless clothed body searches of female prisoners was cruel and unusual punishment that violated the Eighth Amendment. It was noted that the policy inflicted "pain" for Eighth Amendment purposes, where many female inmates had been sexually abused prior to their incarceration, so that unwanted intimate touching by men was likely to cause psychological trauma. In addition, the cross-gender clothed body searches were "unnecessary" for Eighth Amendment purposes, where prison security was not dependent upon such searches, and the searches did not ensure equal employment opportunities for male guards. The determination that the searches violated the inmates' Eighth Amendment rights warranted a permanent injunction that prohibited nonemergency, suspicionless clothed body searches by male guards. (Washington Corrections Center for Women)

U.S. District Court
ACCESS TO COURT
EQUAL PROTECTION
PROGRAMMING

Klinger v. Nebraska Dept. of Correctional Services, 824 F.Supp. 1374 (D. Neb. 1993) reversed 31 F.3d 727. Female inmates at Nebraska's only women's prison brought a class action against the Nebraska Department of Correctional Services (DCS) and related parties for equal protection and access-to-court violations and various other claims. Following a trial on liability issues, the district court found that the female inmates' equal protection rights were violated by programs and services relating to pay, education and vocational training, law library facility, health and dental care, and recreational facilities and activities when compared with similar programs and services available at the men's penitentiary. In addition, discrimination in education and vocational training violated Title IX of the Education Amendments of 1972. Maintaining an inadequate law library and denying segregation and orientation inmates access to the law library or to legal aide violated the inmates' right of access to courts. On appeal, the court found that female inmates were not similarly situated as male inmates, and therefore the females suffered no equal protection violation. (Nebraska Center for Women, York, Nebraska)

1994

U.S. District Court
CLASSIFICATION

Galvan v. Carothers, 855 F.Supp. 285 (D.Alaska 1994). A female inmate who was placed on an all male wing of a prison brought an action against prison officials, alleging violations of her constitutional rights. The officials moved for summary judgment. The district court granted the motion, finding that Alaska regulations and prison policies did not give the inmate a liberty interest in her right to classification hearings for purposes of her procedural due process claim. Also, the female inmate's right not to be housed on the all male wing was not clearly established at the time of the alleged wrongful conduct by officials for purposes of qualified immunity. (Lemon Creek Correctional Center, Alaska)

U.S. District Court
ACCESS TO COURT
CHILDREN

Glover v. Johnson, 850 F.Supp. 592 (E.D. Mich. 1994). Women inmates brought an action challenging decisions by the Michigan Department of Corrections to reduce funding to Prison Legal Services (PLS) and to exclude assistance in parental rights matters. The district court found that women inmates' right of meaningful access to courts entitled inmates to legal assistance in parental rights matters in order to guarantee due process, even though prisons had adequate law libraries and some inmate paralegals. There could be no meaningful access without assistance of an attorney, and parents have a strong interest in the accuracy and justice of a decision terminating parental rights. (Michigan Department of Corrections)

U.S. Appeals Court
FAILURE TO
PROTECT
MEDICAL CARE

Hare v. City of Corinth, MS, 22 F.3d 612 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a civil rights action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and the officials appealed. The appeals court noted that, at the time the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to respond to the detainee's serious medical needs, including suicidal tendencies and attempts to commit suicide, with at least more than deliberate indifference. The pretrial

detainee committed suicide in her cell by hanging herself with a blanket she had torn into strips. The court found genuine issues of material fact as to whether jail officials knew or should have known of the detainee's vulnerability to suicide. She was placed in an isolated cell which was not visually monitored and which could not be reached by a trustee or the dispatcher on duty. The court precluded summary judgment in favor of the officials on qualified immunity grounds. (Corinth City Jail, Mississippi)

U.S. Appeals Court
EQUAL PROTECTION
PROGRAMMING

Jeldness v. Pearce, 30 F.3d 1220 (9th Cir. 1994). Women prisoners incarcerated in a state prison brought a class action alleging that the Oregon Department of Corrections discriminated against women inmates in providing educational and vocational opportunities, in violation of Title IX of the Education Amendment of 1972, regulations promulgated thereunder, and the equal protection clause of the Fourteenth Amendment. The U.S. District Court ruled against the inmates and they appealed. The appeals court found that Title IX and its regulations applied to prison educational programs and that Title IX required equality of treatment, rather than parity. The court ruled that penological necessity was not a defense in the Title IX case, but was only a factor in how Title IX was applied in prison. The court also found that the practice of awarding merit pay to men, but not to women, participating in the same vocational training course in the same location amounted to disparate treatment violating Title IX and its regulations. (Oregon Women's Correctional Center)

U.S. Appeals Court
EQUAL PROTECTION
PROGRAMMING

Klinger v. Department of Corrections, 31 F.3d 727 (8th Cir. 1994). Inmates at Nebraska's only women's prison brought a class action against Nebraska Department of Correctional Services and related parties, asserting equal protection claims. The U.S. District Court found that the inmates' equal protection rights had been violated. On appeal, the court of appeals, reversing the decision, found that the inmates at the women's prison and inmates at a penitentiary that housed only men were not similarly situated for purposes of prison programs and services, and therefore, the female inmates had not suffered an equal protection violation, even if their programs in 12 areas were inferior to those male inmates received at the penitentiary. (Nebraska Center for Women)

U.S. District Court
DISCRIMINATION
PRIVACY
SEXUAL
HARASSMENT

Thompson v. Wyandotte County Detention, 869 F.Supp. 893 (D.Kan. 1994). A detention center inmate brought a civil rights action alleging that she had been viewed by males while she was showering. The district court found that the inmate failed to state a cause of action for sexual discrimination when she alleged that officials permitted males to observe her in the nude while she showered. There was no evidence that the inmate was treated differently from males or discriminated against due to her gender. In addition, the inmate did not state a cause of action for sexual harassment. Federal sexual harassment statutes and regulations require the existence of quid pro quo or a hostile work environment, and neither factor was present. The inmate's limited privacy right, to not be viewed naked by members of the opposite sex, does not include irregular or infrequent viewings, or viewings with a legitimate basis. (Wyandotte County Detention, Kansas)

U.S. District Court
EQUAL PROTECTION
PROGRAMMING

West v. Virginia Dept. of Corrections, 847 F.Supp. 402 (W.D.Va. 1994). A civil rights action was brought by a female youthful offender challenging the denial of her participation in the Virginia Boot Camp Incarceration Program (VBCIP). The court found that the denial of participation to women violated equal protection despite the contention that the program was established to address problems that were more pressing in men's prisons and that limiting the program to men's prison was justified because of limited resources. The district court found that the program was subject to the "intermediate scrutiny" standard of equal protection analysis. The court noted that while discrimination on the basis of race or national origin is subject to "strict scrutiny" on an equal protection challenge, classifications based on economic factors or nonsuspect classifications are subject to a rational basis standard of review, while sex-based classifications are given "intermediate" scrutiny. To withstand "intermediate scrutiny" equal protection analysis, a statutory classification must be substantially related to an important government objective. Legislative distinctions based on gender may thus be justified by an important governmental interest in recognizing demonstrated differences between males and females. Intermediate scrutiny will reject regulations based on stereotypical and generalized conceptions about the differences between males and females. (Virginia Boot Camp Incarceration Program)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION
MEDICAL CARE
PRIVACY
PROGRAMMING
SEXUAL
HARASSMENT

Women Prisoners v. District of Columbia, 877 F.Supp. 634 (D.D.C. 1994). A class action was brought on behalf of female prisoners in the District of Columbia. The district court found that the Eighth Amendment was violated by sexual harassment, living conditions, and lack of proper medical care. Sexual harassment at the prison facilities amounted to wanton and unnecessary subjection of pain. It was so malicious that it violated contemporary standards of decency and, in combination, sexual assaults, vulgar sexual remarks of prison officials, a lack of privacy within cells, and refusal of some male guards to announce their presence in the living areas of women prisoners, constituted a violation of the Eighth Amendment because they mutually heightened the psychological injury of women prisoners. The living conditions for the women prisoners violated contemporary standards of decency and violated the Eighth Amendment. The dormitories were open and crowded and could not contain fire within any one room. There was only one unlocked fire exit, no fire alarm system, no sprinkler system, and no regularly conducted fire drills. In addition, the infestation of roaches, torn mattresses, inadequate bathing and toilet facilities, excessive

crowding, lack of mechanical ventilation, unclean floors, inadequate drainage, inadequate lighting, and uncovered dumpsters raised the risk of illness and injury to a constitutionally unacceptable level. The combination of conditions surrounding the inadequate heating unit in prison created an objective violation of the Eighth Amendment, as the malfunction in the heating unit caused freezing temperatures in cells and not all prisoners were given an adequate number of blankets. Deliberate indifference was demonstrated by the prison official's knowledge of the conditions, knowledge of their danger, and the failure to make changes. The female prisoners demonstrated that prison officials had deviated from the standard of acceptable medical care for women prisoners through deficient gynecological examinations and testing, inadequate testing for sexually transmitted diseases, inadequate follow-up care, inadequate health education, inadequate prenatal care, inadequate prenatal protocol, and ineffective prenatal education. There was a Title IX violation with respect to educational opportunities offered to female prisoners as compared to male prisoners, as women prisoners did not have the same reasonable opportunities for similar status and did not have an equal opportunity to participate in programs of comparable quality. The failure of prison officials to provide comparable recreational facilities to men and women violated Title IX. The failure to provide female prisoners with opportunities equal to those of men in the area of religious programs violated Title IX. Women had only limited access to a chaplain and one correctional facility did not offer a place to worship which was comparable to the men's chapel. There was a Title IX violation where women did not have the same educational opportunities as men as there was pronounced inequality in academic and college educational programs. Women had only three hours of ABE or GED classes whereas men had five and one-half hours to eight hours of study. The lack of equivalent opportunity for male and female prisoners in the area of work details violated Title IX. Work details for women were stereotypically below scale and were not nearly equivalent to the work details at the men's facilities which helped men establish marketable trades. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

1995

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION
PROGRAMMING
TRANSFER

Archer v. Reno, 877 F.Supp. 372 (E.D. Ky. 1995). Female inmates who were either employed at a dental lab in an all female correctional facility or who were enrolled in the facility's apprenticeship program brought Bivens and Title IX claims against the Bureau of Prisons (BOP) and others who decided to convert the all female facility to an all male institution, thereby preventing the inmates from completing the educational course to become certified dental technicians. The defendants moved for summary judgment. The district court found that the inmates had no viable cause of action under Bivens to prevent the BOP from converting the facility to an all male institution and from transferring the female inmates to other correctional institutions, thereby preventing them from completing the educational course. The inmates had no constitutional right to be housed in a particular facility and could be transferred to another institution for any reason or no reason at all and the inmates had no constitutional right to a particular job assignment or to be rehabilitated. In addition, the Title IX section stating that no person shall, on the basis of sex, be excluded from participation in or be subjected to discrimination under any education program or activity receiving federal assistance pertains only to state or local government programs that receive federal financial assistance and was not applicable to the national apprenticeship program offered to the federal female inmates through the dental lab at the correctional facility. The dental lab was not a "program or activity" as defined under Title IX and thus, female inmates had no viable cause of action under Title IV against the BOP and other officials who decided to convert the facility. (Federal Medical Center, Lexington, Kentucky)

U.S. District Court
EQUAL PROTECTION
PROGRAMMING
SPECIAL NEEDS

Clarkson v. Coughlin, 898 F.Supp. 1019 (S.D.N.Y. 1995). Male and female deaf and hearing-impaired inmates sued correctional officials alleging failure to accommodate their hearing impairments in violation of the Rehabilitation Act, the Americans with Disabilities Act (ADA), due process, and the Eighth Amendment. The inmates also alleged violation of equal protection because male inmates were granted access to a sensorially disabled unit, but not females. The district court found that the defendants violated all statutes and constitutional provisions under which the inmates had sought relief, warranting declaratory and injunctive relief. The court found that deaf and hearing-impaired inmates had a parole-related liberty interest at stake entitled them to the presence of a qualified interpreter at hearings and other proceedings. The court found violation of the requirements of the ADA with regard to protection against discrimination and the location of accessible services, activities and facilities. Although the defendants had distributed an ADA manual to staff, the manual did not provide information to inmates about accommodations that were available to them, nor did it contain procedures for employees' handling of inmate requests for accommodation. The court found that the defendants violated the ADA by failing to provide the inmates with the opportunity to request auxiliary aids and services of their choice. The court found violation of ADA's self-evaluation obligations, noting that while the department did complete the physical plant and personnel portions of the self-evaluation, those did not include an evaluation of inmate housing. The court found that the defendants violated the Rehabilitation Act and ADA by failing to establish an effective procedure for deaf and hearing impaired inmates regarding accommodations and assistive services, and by failing to provide qualified interpreters for various aspects of the reception and

classification process. The court found that the defendants violated the Rehabilitation Act and ADA by failing to provide them with timely access to telephone communication devices, close caption decoders for televisions, and special alarms to alert them in the event of a fire. The court found that the defendants violated the Rehabilitation Act and ADA by excluding deaf and hearing-impaired inmates from participation in programs such as academic and vocational programs and rehabilitative counseling, on the basis of their disability. The court noted that no qualified sign language interpreters were made available to such inmates for educational purposes, effectively excluding them from programs. According to the court, medical treatment provided to deaf and hearing-impaired inmates without the assistance of a qualified interpreter or other assistive devices was a failure to provide sufficient information for informed consent, thereby violating inmates' due process rights to be free from unwanted medical treatment. At least two inmates experienced improper and possibly harmful treatment as a result. The use of sign language interpreters who were not bound to maintain confidentiality in the administration of medical treatment violated the inmates' constitutional right to privacy. The court found that the defendants violated the Rehabilitation Act and ADA by conducting disciplinary, grievance and parole hearings for deaf and hearing-impaired inmates without affording them interpretive services or assistive devices necessary to render their opportunity to be heard meaningful. The court held that even if all of the needs of deaf and hearing-impaired inmates were met at a sensorially disabled unit at one prison, the defendants violated their rights under the Rehabilitation Act and ADA by transferring them to other facilities for disciplinary, safety and/or medical reasons. Also, the court found that the fact that there were more male deaf and hearing-impaired inmates requiring services than female did not justify the fact that many male inmates--but no female inmates--had access to a prison's sensorially disabled unit. (New York Department of Correctional Services)

U.S. District Court
EQUAL PROTECTION
PROGRAMMING

Glover v. Johnson, 879 F.Supp. 752 (E.D. Mich. 1995). Prison officials sought to modify a remedial plan and a plan for vocational programs designed to remedy equal protection violations identified in a civil rights action brought by female inmates. The district court found that the prison officials' failure to substantially comply with a remedial plan designed to provide female inmates with educational and vocational opportunities comparable to those provided to male inmates precluded termination of the court's jurisdiction over the civil rights case by deleting the role of the compliance monitor and modifying the termination language of the plans. The prison officials were required to substantially comply with goals of the negotiated settlement before the court would rule that finality had been reached and its involvement was no longer required. (Huron Valley Women's Facility, Michigan)

U.S. Appeals Court
EQUAL PROTECTION
PROGRAMMING

Pargo v. Elliott, 49 F.3d 1355 (8th Cir. 1995). A group of women inmates brought an action against Department of Corrections officials and a prison superintendent seeking injunctive relief in which they alleged that differences between programs in men's and women's prisons deprived women of equal protection. The U.S. District Court denied relief and the inmates appealed. The appeals court, vacating and remanding, found that the district court's determination that men and women inmates were not similarly situated was unreviewable. The matter was remanded for entry of factual findings, where the district court made no findings about various programs and services offered, whether men and women were similarly situated in terms of any particular program area, the differences in programs, or reasons for them, even though the court noted generally that there were some clear differences between the institutions. (Iowa Correctional Institution for Women)

U.S. District Court
SEXUAL
HARASSMENT

Smith v. U.S., 896 F.Supp. 1183 (M.D.Fla. 1995). Residents of a halfway house brought an action against the facility and its manager to recover under Bivens for sexual harassment allegedly perpetrated by an employee. The district court held that the facility and manager were not liable for an employee's sexual harassment of residents as there was not causal connection between the acts of the facility and its manager and the alleged civil rights violation committed by an employee. The employee met or exceeded all requirements for employment at the facility and signed a document acknowledging that he would abide by a facility policy not to discriminate on the basis of sex. (Goodwill Industries-Suncoast Inc., Florida)

U.S. Appeals Court
FAILURE TO PROTECT
CLASSIFICATION

Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995). A pretrial detainee filed a pro se § 1983 action against guards, alleging violation of her due process rights. The district court dismissed in part and entered summary judgment for the guards in part. The appeals court affirmed in part and reversed in part, finding that allegations that a guard showed deliberate indifference for the detainee's rights by placing her in a cell with a mentally ill inmate who presented an imminent potential for assault were sufficient to state a § 1983 claim. But the appeals court found that allegations that a guard failed to supervise subordinate guards and allowed them to provide inadequate medical care failed to state a claim. The court also found that the detainee was not entitled to a pre-segregation hearing; she had been segregated for her own protection and that of other inmates after a verbal confrontation. (Sangamon County Jail, Illinois)

1996

U.S. District Court
SEARCHES

Dugas v. Jefferson County, 931 F.Supp. 1315 (E.D.Tex. 1996). A female arrestee brought a § 1983 action against a county and a sheriff's deputy claiming that a strip search ordered by the deputy following her arrest for a misdemeanor violated her Fourth Amendment rights. The district court denied the deputy's motion for summary judgment, finding that he was not

entitled to a qualified immunity defense because it was clear at the time of the deputy's order that a strip search of a minor offense arrestee violated the Fourth Amendment. The court also found that the deputy was not shielded from civil liability for illegal acts simply because he was following orders. (Jefferson County Jail, Texas)

U.S. Appeals Court
ACCESS TO COURT
CHILDREN

Glover v. Johnson, 75 F.3d 264 (6th Cir, 1996). Female prisoners brought an action challenging the decision of prison officials to terminate funding for a prison legal services program under which inmates were provided with assistance on child custody matters. The prisoners alleged that this violated an earlier order entered in a class action suit which required the state to contract for the provision of legal services. The district court found the prison officials in contempt of the earlier order, but the appeals court reversed the lower court decision. The appeals court ruled that the finding of contempt was an abuse of discretion as the prior order did not require that the state fund legal assistance in any particular area of the law. (Michigan Department of Corrections)

U.S. Appeals Court
SEARCHES

Kelly v. Foti, 77 F.3d 819 (5th Cir. 1996). An arrestee filed a § 1983 action against police and jail officials asserting constitutional and tort claims. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court affirmed in part, dismissed in part, and remanded the case. The appeals court held that the conduct of the arrestee in making an illegal left turn and failing to present a driver's license did not create reasonable suspicion that she was hiding weapons or contraband so as to justify a strip search for the purposes of a police officer's claim of qualified immunity. The court found that the strip search was not objectively reasonable under the law at the time of the search, absent individualized suspicion. The court ruled that jail officials may strip search a person arrested for a minor offense and detained pending posting of bond only if they possess reasonable suspicion based on such factors as the nature of the offense, the arrestee's appearance and conduct, or a prior arrest record. The court noted that although the arrestee lacked photograph identification and failed to post bond within five hours, she readily identified herself, explained that she had left her driver's license in her hotel room, cooperated with police, and presented a purse full of other nonphoto identification. (City of New Orleans and Sheriff)

U.S. District Court
ACCESS TO COURTS

Moore v. Lehman, 940 F.Supp. 704 (M.D.Pa. 1996). An inmate challenged the constitutionality of an attorney visitation policy, alleging violation of inmates' right of access to courts. The district court found that neither the attorney visitation policy nor its application by prison officials violated inmates' constitutional rights. The policy required the name of an inmate's attorney to be placed on a visitation list prior to the attorney's visit in order for the attorney to be allowed to visit or meet with an inmate. The inmate alleged that the transition from hard paper to the prison's computer system, which entailed time to enter the paper list into the system, caused unconstitutional delays. The court found that the inmate was not "injured" by delays caused by the policy, and that the prison had a legitimate governmental interest in preventing escapes and violation of prison policies, which justified the policy. (State Correctional Institute at Muncy, Pennsylvania)

U.S. Appeals Court
MEDICAL CARE

Vance v. Peters, 97 F.3d 987 (7th Cir. 1996). A female inmate filed a § 1983 action against corrections officials alleging deliberate indifference to her serious medical needs from a broken arm. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The court found that while prison officials' knowledge of an inmate's needs learned from the inmate's communications could constitute sufficient knowledge to require action to investigate and if necessary to act, the inmate failed to demonstrate that she had communicated with the officials or that others had done so on her behalf. (Dwight Correctional Center, Illinois)

U.S. Appeals Court
SEXUAL HARASS-
MENT
EQUAL PROTECTION
PROGRAMMING

Women Prisoners of D.C. Correct. v. D.C., 93 F.3d 910 (D.C. Cir. 1996). A class action suit was brought on behalf of female inmates in the custody of the District of Columbia and the district court entered a corrective order. The appeals court vacated in part and remanded, finding that the availability of fewer programs for female inmates did not violate equal protection. The appeals court found that female inmates were not similarly situated to male inmates, and thus the fact that female inmates were offered fewer programs than male inmates at another facility did not violate equal protection. The court noted that female inmates were housed in a smaller facility. The appeals court also found that the district court order setting a population cap was overbroad. The appeals court held that the district court's order impermissibly usurped the executive functions of the District of Columbia by providing that the court's special officer and her staff were to monitor allegations of sexual harassment at facilities in which female inmates were housed and were to ensure that each reported violation of policy was thoroughly investigated and documented. The district court had also provided that the warden was required to take action based on the monitor's report. (Lorton Minimum Security Annex, Correctional Treatment Facility, and Central Detention Facility, District of Columbia)

1997

U.S. District Court
PROTECTIVE
CUSTODY

Carrigan v. State of Del., 957 F.Supp. 1376 (D.Del. 1997). A female inmate brought a civil rights action against prison officials and a guard as the result of an alleged rape by the guard. The district court found that the inmate did not establish deliberate

indifference by prison officials where the officials had a policy forbidding sexual contact between correctional officers and inmates. The alleged rapist had received a total of 64 hours of training, and the inmate offered no expert opinion to rebut an expert report that the training was adequate. The court found that prison officials were entitled to qualified immunity. The court noted that the inmate's transfer to protective custody following her alleged rape by a guard did not show deliberate indifference but, rather, showed the prison officials' attentiveness to her condition as they were aware that her claims put her at risk of attack by other inmates. The court found that the inmate failed to establish an Eighth Amendment violation through evidence of other incidents because nearly all of those incidents occurred after the alleged rape, and those which occurred prior took place at a different institution or were unsubstantiated by the inmate involved. However, the court found that the inmate had stated a claim based on gross or wanton negligence, or bad faith, against the guard. (Delaware Department of Correction)

U.S. Appeals Court
SEXUAL HARASS.

Downey v. Denton County, Tex., 119 F.3d 381 (5th Cir. 1997). An inmate who was sexually assaulted by an employee of a county sheriff's department sued the county and jail officials and employees under § 1983 and the Texas Tort Claims Act, alleging they were negligent in failing to prevent the assault. The district court entered judgment for all defendants on the § 1983 claim, and entered judgment for the inmate on the remaining claims. The district court held the county liable for \$100,000 and the assailant liable for \$1 million. The county and inmate appealed. The appeals court affirmed as amended, finding that the inmate's tort claim did not "arise out of" the assailant's intentional tort but rather from a co-employee's negligence. The assailant left his post and went to the women's unit and asked another officer to have the plaintiff brought from her cell to repair a short tear in his uniform pants. The employee explained that the plaintiff was not a trustee and it was customary for trustees to repair guards' uniforms. Although the employee thought the assailant's request was strange, she did not call her supervisor and instead brought the plaintiff down to repair the uniform as requested by the assailant. Although the employee initially remained with the plaintiff and assailant after admitting them to a multipurpose room, she eventually left them unsupervised for nearly two hours. (Denton County Jail, Texas)

U.S. Appeals Court
DISCRIMINATION
MEDICAL CARE

Dulany v. Carnahan, 132 F.3d 1234 (8th Cir. 1997). Twenty female inmates in two state prisons brought a § 1983 action against various state and prison officials alleging that the officials were deliberately indifferent to their serious medical needs in violation of their constitutional rights and rights secured under the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the plaintiffs had no specific complaints regarding their ADA claim that prison facilities were not accessible to disabled inmates and that such inmates were denied proper therapy, assistance and equipment. (Renz Correctional Center and Chillicothe Correctional Center, Missouri)

U.S. District Court
SEXUAL HARASS.

Fisher v. Goord, 981 F.Supp. 140 (W.D.N.Y. 1997). A female state prisoner filed a civil rights action against corrections officers and officials claiming she had been raped and sexually abused by officers. The prisoner moved for a preliminary injunction transferring her to another institution and the court denied the motion. The court held that it did not have the authority to transfer the state prisoner to a federal prison, and that prison officials had taken steps to protect the prisoner from attacks in the future. A newly enacted state law classified any sexual relations between a prison employee and an inmate as statutory rape, and the court suggested that this was likely to deter any further misconduct. The court held that the alleged consensual interactions between a correction officer and the prisoner, although inappropriate, were not cruel and unusual punishment under the Eighth Amendment, nor did the officer's alleged conduct in stroking the prisoner's hair while she was asleep and giving her an unsolicited kiss. The court also held that inmates do not have a First Amendment right to write love letters to corrections officers and that prison authorities have a significant and legitimate interest in prohibiting and punishing such conduct. (Albion Correctional Facility, New York)

U.S. Appeals Court
ACCESS TO COURT
EQUAL PROTECTION
PROGRAMMING

Klinger v. Department of Corrections, 107 F.3d 609 (8th Cir. 1997). Women prisoners incarcerated at the Nebraska Center for Women (NCW) brought a § 1983 action alleging that the Department of Correctional Services (DCS) and several DCS officials violated their rights under the equal protection clause and Title IX by failing to provide equal educational opportunities for male and female prisoners in the state. They also alleged violation of their right of meaningful access to court because the DCS failed to provide an adequate law library at the facility. The district court found no Title IX violation but did find denial of access to court. The parties appealed. The appeals court affirmed in part and reversed and vacated in part. The appeals court found that comparison of educational opportunities available to female prisoners at NCW with educational opportunities available to men only at the Nebraska State Penitentiary was not sufficient to prove a violation of Title IX. The court also held that while the prisoners did show a complete and systematic denial of access to a law library or legal assistance, they failed to further show that any prisoner at NCW had suffered an actual injury or prejudice as the result of that denial of

access. (Nebraska Center for Women)

U.S. Appeals Court
SEARCHES

Swain v. Spinney, 117 F.3d 1 (1st Cir. 1997). A female arrestee brought a § 1983 action against police officials alleging that a female officer's strip search of her, under orders from a lieutenant, violated her federal and state rights. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court reversed and remanded, finding that issues of fact as to the basis for the search precluded summary judgment on the issues of reasonableness and qualified immunity. The appeals court affirmed the district court's finding that § 1983 liability was not established based on the city's alleged failure to properly train the police force as to its uniform policy on strip searches. According to the court, police officers were supplied with policy guidelines, and there was no evidence of any other incidents which would have put the city on notice that its approach was inadequate. The plaintiff was arrested for shoplifting and was suspected of having possessed a small baggie of marijuana. (North Reading Police Station, Massachusetts)

U.S. District Court
SEXUAL HARASS.
RESTRAINTS
MEDICAL CARE

Women Prisoners of Corrections v. Dist. of Columbia, 968 F.Supp. 744 (D.D.C. 1997) In an ongoing class action suit brought on behalf of female inmates in the District of Columbia, the District appealed a corrective order and its subsequent modification. The appeals court vacated in part and remanded. On remand, the district court held that the District would be required to adopt an order prohibiting sexual harassment involving employees and women prisoners, and to take appropriate steps to prevent and remedy sexual harassment committed by its employees. The court ordered the District to include a prohibition against unwelcome sexual activity directed at prisoners, invasions of women prisoners' privacy by male employees, and retaliation for reporting complaints of sexual harassment. The court held that the District would be required to provide diagnostic evaluations for women prisoners, similar to those currently provided for men. The court required the District to develop and implement a protocol concerning restraints used on pregnant and postpartum women, to ensure that pregnant prisoners would be transported in the least restrictive way possible, consistent with legitimate security reasons. (District of Columbia)

1998

U.S. Appeals Court
SEXUAL HARASS-
MENT
FAILURE TO
PROTECT
EQUAL PROTECTION
STAFF

Barney v. Pulsipher, 143 F.3d 1299 (10th Cir. 1998). Two female former inmates who were sexually assaulted by a jailer each brought a § 1983 action against jailer, county, sheriff and county commissioners based on their assault and other conditions of confinement. The actions were consolidated and all defendants except the jailer were granted summary judgment by the district court. The appeals court affirmed, finding that the county was not liable on the grounds of failure to train or inadequate hiring. The court held that the inmates did not show that the training received by the jailer was deficient and that even if it was, the sexual assault of the inmates was not plainly the obvious consequence of a deficient training program. The court noted that the sheriff should not have been expected to conclude that the jailer was highly likely to inflict sexual assault on female inmates if he was hired as a correctional officer. The court found that the sheriff and commissioners did not violate the inmates' rights by permitting the jailer to be the sole guard on duty in the county jail. The court noted that permitting a single officer to be on duty when a second jailer was sick or on vacation did not impose liability on the county, where there were no previous incidents of sexual harassment or assault of female inmates that would have given notice to the county that its one-jailer policy would result in injuries. The court also noted that the sheriff acknowledged problems with crowding and inadequate monitoring, and its inability to house female inmates for extended periods of time. The county contracted out female inmates to neighboring jails that had better facilities and limited confinement of female inmates to 24-36 hours whenever possible. According to the appeals court the inmates failed to establish an equal protection claim. The court also found that the sheriff and commissioners did not act with deliberate indifference to the female inmates' health and safety with regard to conditions of confinement. The inmates' allegations regarding a filthy cell, inadequate lighting and ventilation, lack of enclosure around a shower, unappetizing food, and lack of access to recreational facilities, did not rise to the level of a constitutional violation given that the inmates were confined for only 48 hours. (Box Elder County Jail, Utah)

U.S. Appeals Court
SEXUAL HARASS-
MENT
FAILURE TO
PROTECT

Berry v. Oswalt, 143 F.3d 1127 (8th Cir. 1998). A female inmate at a state corrections center who was allegedly raped by one correctional officer and sexually harassed by a second officer, brought a § 1983 action against corrections officials. The district court granted summary judgment for a warden and director of corrections, but entered judgment against other officials, awarding reduced damages. The inmate and an officer appealed. The appeals court found that the inmate was entitled to damages against the first officer for both outrage and constitutional violation, and that the finding that a second officer's conduct violated the Eighth Amendment was supported by evidence. The second officer was found to have harassed the inmate by attempting to perform non-routine patdown searches, propositioning the inmate, and

making sexual comments. The appeals court reversed the district court's decision to eliminate a jury award for outrage, ordering the district court to fully effectuate the jury's verdict on remand. The jury had originally awarded the inmate compensatory damages of \$40,000 on her § 1983 claim and \$25,000 in compensatory damages on her state tort claim, along with \$15,000 in punitive damages. (Tucker Women's Unit, Arkansas Department of Corrections)

U.S. Appeals Court
PROGRAMMING

Cunningham v. David Special Commitment Center, 158 F.3d 1035 (9th Cir. 1998). In a § 1983 action challenging conditions of confinement at a facility for sex offenders, the district court issued an injunction requiring the defendants to bring the treatment program into compliance with constitutional standards with regard to mental health treatment. The district court then permitted the first female resident of the center to intervene and granted enforcement of the injunction with regard to her. The defendants appealed and the appeals court reversed, finding that the court of appeals had jurisdiction to review the modification of the original injunction, but that the district court had erred in granting intervention. The female resident had asked that she be placed in a treatment facility where she would not be the sole female resident and would not be housed with males, and that her treatment plan not require her to participate in therapy with male sex offenders. (Special Commitment Center at Monroe, Washington)

U.S. District Court
SEARCHES

Foote v. Spiegel, 995 F.Supp. 1347 (D.Utah 1998). A detainee sued state and county officials alleging violation of her rights because she was strip searched. The district court denied summary judgment for the arresting officers and the case was affirmed in part, reversed in part, and dismissed in part on appeal. On remand, the district court held that there was not reasonable suspicion to strip search the detainee after a pat down search did not reveal contraband and the detainee was not being placed in the general jail population. The court found that suspicion that the detainee was under the influence of drugs or alcohol did not provide adequate justification for the search. The court found the county liable for failing to promulgate an adequate strip search policy that included reasonable suspicion of concealed contraband that would not be discovered through a rub search as a prerequisite to the strip search of a detainee who is not entering the general jail population. The court noted that flaws in the jail policy were known for a year prior to this incident and the county's refusal to change the policy exhibited deliberate indifference to the likelihood of future violations. (Davis County Jail, Utah)

U.S. District Court
FAILURE TO
PROTECT

Giron v. Corrections Corp. of America, 14 F.Supp.2d 1245 (D.N.M. 1998). A female prisoner brought a § 1983 action against a correctional officer, alleging he had raped her. The district court denied the officer's motion for summary judgment, finding that the officer was acting under color of state law when he raped the prisoner, and the officer was not a state employee immune from suit for compensatory and punitive damages under the Tort Claims Act. According to the court, even though a private firm ran the correctional facility, the officer exercised coercive authority over the prisoner through his employment, used his employment status to gain access to her prison cell, and the state was directly involved in aspects of prison life. The court noted that the delegation of a governmental function must carry with it the delegation of constitutional responsibilities. (New Mexico Women's Correctional Facility, operated by the Corrections Corporation of America)

U.S. District Court
PRIVACY
FAILURE TO
PROTECT
MEDICAL CARE

Giron v. Corrections Corp. of America, 14 F.Supp.2d 1252 (D.N.M. 1998). A female inmate who had been raped by a prison guard brought a § 1983 action alleging that officials deliberately disregarded a substantial risk of harm to her and denied her necessary psychological care. The district court granted summary judgment in favor of the officials. The court held that the officials' awareness of two prior incidents of sexual misconduct by other security and correctional officers was not sufficient to establish that the officials must have drawn the inference that a substantial risk of harm existed. The court found that the alleged "voyeuristic" location and viewability of shower areas, the absence of food tray slots in a segregation unit, and the staffing and monitoring of guards in the segregation unit, did not create a substantial risk of harm. The court held that the inmate was not deprived of necessary medical care following the incident. She received psychiatric care after she was sexually assaulted, her care was assessed by an independent psychiatric medical evaluator who concluded that her treatment had been "reasonable and appropriate," and she saw a psychiatrist 18 times and a psychologist at least 100 times during a six month period. (New Mexico Women's Correctional Facility, operated by the Corrections Corporation of America)

U.S. District Court
FAILURE TO
PROTECT
TRANSFER

Gwynn v. Transcor America, Inc., 26 F.Supp.2d 1256 (D.Colo. 1998). A former prisoner who had been transported from Oregon to Colorado by employees of a Tennessee corporation which contracted with the Colorado Department of Corrections to transport prisoners to other states, sued the corporation under § 1983 alleging that she had been sexually assaulted and otherwise endangered during the trip. The district court held that the corporation and its employees, who were nonresidents of Colorado, were subject to personal jurisdiction in Colorado. The court found that the

prisoner stated a § 1983 claim by alleging that she had been sexually assaulted by one employee and that another employee failed to stop the assaults. The court found that the employees were acting as agents and prison guards of the State of Colorado, and used state power as a coercive force to further their wrongful acts. (Colorado Department of Corrections)

U.S. District Court
CHILDREN
MEDICAL CARE
PREGNANCIES

Ludlam v. Coffee County, 993 F.Supp. 1421 (M.D.Ala. 1998). A pretrial detainee and her minor child brought a civil rights action against a sheriff and a county alleging constitutional violations arising from alleged failure to provide her with adequate medical treatment during her incarceration. The detainee was pregnant during her detention. The district court granted summary judgment for the defendants, finding that the detainee failed to establish the sheriff's supervisory liability for alleged indifference to her medical needs. According to the court, the sheriff was not shown to have been personally involved in the alleged deprivation of treatment for the detainee, the county jail's policy was to provide access to appropriate treatment for all inmates, and the sheriff never received a request from the detainee regarding medical attention and knew of no inmate who had ever been denied medical treatment. The court held that the county was not liable because, under Alabama law, the county had no role in operating, administering or overseeing the local jail, nor had the county ever received any notice that the detainee was denied medical treatment. The detainee alleged that the county failed to provide adequate treatment for her during her confinement, including failure to take her to an obstetrician/gynecologist as recommended by the jail physician. The detainee alleged that as the result of the county's inadequate treatment, her daughter, who was born four months after her release, experienced diminished weight, limited development, and excessive medical problems. (Coffee County Jail, Alabama)

U.S. District Court
FAILURE TO
PROTECT
STAFF

White v. Fauver, 19 F.Supp.2d 305 (D.N.J. 1998). Inmates filed a class action civil rights suit alleging that prison officials and guards engaged in a pattern of physical abuse and threats, and subjected inmates to a series of unconstitutional living conditions, in retaliation for the murder of a prison guard. The district court held that the inmates were not required to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA) because the PLRA term "prison conditions" does not encompass intentional physical attacks, conspiracy to use excessive force to intimidate inmates, threats of further physical violence to conceal prior attacks, alleged false disciplinary charges and retaliation for filing suit, or claims for compensatory and punitive damages where monetary relief was not available under the state's inmate grievance procedure. But the court held that allegations of mere threats do not state a civil rights claim, and that prison officials were entitled to qualified immunity with respect to allegations of unconstitutional prison conditions. (Bayside State Correctional Facility, New Jersey)

1999

U.S. District Court
SEXUAL HARASSMENT

Cain v. Rock, 67 F.Supp.2d 544 (D.Md. 1999). A female prisoner brought a § 1983 action against county officials. The district court held that the county's policy of allowing cross-gender supervision did not violate the prisoner's rights. The court also found that a random sexual assault by a correctional officer, where there was no history of assaults on prisoners by employees and the county had moved quickly to investigate the officer's actions, was not "punishment" for Eighth Amendment purposes. The prisoner claimed that the officer had performed oral sex on her in her cell. (Anne Arundel County Detention Center, Maryland)

U.S. District Court
SEARCHES

Carlin v. Manu, 72 F.Supp.2d 1177 (D.Or. 1999). Female state prison inmates challenged skin searches that were being observed by male correctional officers. The district court granted qualified immunity to the officers, noting this was not clearly identified as unlawful under existing law and that the observation was an isolated event caused by the emergency removal of the females to a male prison. The female facility was flooded and had to be evacuated, causing the female prisoners to be temporarily housed at a male facility. (Oregon Women's Correctional Center and Columbia River Correctional Institution, Oregon)

U.S. District Court
SEXUAL ASSAULT

Carrigan v. Davis, 70 F.Supp.2d 448 (D.Del. 1999). A female prison inmate brought a § 1983 action against a former correction officer alleging he sexually assaulted her. After a jury trial the district court entered judgment for the inmate as a matter of law, finding that sexual intercourse between the officer and the inmate constituted a per se violation of the inmate's Eighth Amendment rights because such conduct violated contemporary standards of decency. The court also held that the officer could not establish a defense of consent because the inmate was incapable of voluntarily waiving her rights, given her circumstances as a prisoner. The officer had admitted that he had sexual intercourse with the inmate but had argued that the act was consensual. (Women's Correctional Institute, Delaware)

U.S. District Court
SEARCHES
PRIVACY

Drummer v. Luttrell, 75 F.Supp.2d 796 (W.D.Tenn. 1999). An inmate brought a § 1983 action against corrections officials alleging that a disciplinary action violated her due process and Eighth Amendment rights. The inmate had been strip-searched during a shakedown of her dormitory. After squatting and coughing twice the inmate refused a direct order to do so again and was disciplined. She

then left a shower area dressed in nothing but her panties and two male officers were called for assistance. (Shelby County Correctional Center, Tennessee)

U.S. District Court
TRANSSEXUAL
EQUAL PROTECTION

Farmer v. Hawk-Sawyer, 69 F.Supp.2d 120 (D.D.C. 1999). A transsexual prisoner brought an equal protection action against the federal Bureau of Prisons challenging medical treatment policies. The district court granted summary judgment for the defendants, upholding the Bureau's policy of requiring documentation of hormone therapy received prior to incarceration before administering hormone therapy to an inmate. The prisoner had alleged that she had been injured by the heightened documentation requirements that applied only to transsexuals but not to inmates with other mental illnesses. The prisoner was diagnosed with gender identity disorder (gender dysphoria) and is a pre-operative male-to-female transsexual. (Federal Correctional Institute-Butner, North Carolina)

U.S. District Court
MEDICAL CARE
PREGNANCY

Ferris v. County of Kennebec, 44 F.Supp.2d 62 (D.Me. 1999). A pretrial detainee sued county officials and staff in state court. The case was removed to federal court, where the court denied qualified immunity for a nurse and found that the detainee had adequately alleged the nurse's indifference to her serious medical needs. The detainee alleged that the nurse responded to her statement that she believed she was having a miscarriage by taking her pulse, telling her that she was menstruating, and ordering her to lie down. According to the detainee, the nurse did not speak to her again except to inform her that she was being transferred to a different cell because she would not lie down as ordered. The nurse made no attempt to confirm whether the detainee was pregnant, even though the detainee had told jail staff during her intake interview that she was pregnant. The nurse also refused to provide the detainee with sanitary supplies. (Kennebec County Jail, Maine)

U.S. Appeals Court
SEXUAL ASSAULT

Giron v. Corrections Corp. of America, 191 F.3d 1281 (10th Cir. 1999). A female inmate brought a § 1983 action against officers at a correctional facility alleging that she had been raped by a prison guard and that she was denied necessary medical care. The district court entered partial summary judgment for the officials and subsequently entered judgment on jury verdict for the officials on the remaining claims. The appeals court reversed and remanded in part, finding that it was plain error to instruct the jury that to find the guard liable on the excessive force claim, it had to find both that he forced the inmate to have sexual intercourse and that the use of force was applied maliciously for the purpose of causing harm. (New Mexico Women's Correctional Facility)

U.S. District Court
PROGRAMMING
EQUAL PROTECTION

Glover v. Johnson, 35 F.Supp.2d 1010 (E.D.Mich. 1999). Prison officials moved to terminate the district court's continuing jurisdiction over a plan to remedy equal protection violations identified in a civil rights action by female inmates. The district court denied the motion and the appeals court affirmed in part and vacated and remanded in part. On remand, the district court found that post-secondary and college educational opportunities provided to male and female inmates of a state prison were sufficiently comparable, noting that male and female inmates had equal access to degree programs and the state's expenditures on college programming were similar for both genders. The court also held that vocational and apprenticeship opportunities provided to each gender were sufficiently comparable. The court noted that although ten more vocational programs were offered to male inmates, the six most frequently offered male vocational programs were offered to female inmates and enrollment rates of male and female inmates were similar. The court also noted that despite the fact that male inmates were offered twelve different types of apprenticeships and female inmates were offered seven, all eligible female inmates could participate in apprenticeship while only a small portion of eligible male inmates could participate. (Michigan Department of Corrections)

U.S. Appeals Court
PROGRAMMING
EQUAL PROTECTION

Glover v. Johnson, 198 F.3d 557 (6th Cir. 1999). Prison officials moved to terminate the district court's continuing jurisdiction over a plan to remedy equal protection violations identified in a 20-year-old action by female inmates. The district court denied the motion and prison officials appealed. The appeals court vacated and remanded in part and on remand the district court granted the motion. The plaintiffs appealed and the appeals court affirmed. The appeals court reviewed the district court's finding that the state had achieved parity between male and female inmates in educational, vocational, apprenticeship and work-pass opportunities, as well as access to courts. The appeals court found that the district court's decision to terminate jurisdiction was not clearly erroneous. (Michigan Department of Corrections)

U.S. District Court
SEXUAL HARASS.

Newby v. District of Columbia, 59 F.Supp.2d (D.D.C. 1999). A female inmate brought a § 1983 action alleging that she had been forced to participate in sex shows. The district court held that the District of Columbia violated the inmate's rights by failing to actively supervise improper sexual activities involving the entire prison population. The court noted that the District had a duty not only to train its officers in matters related to sexual contact between prison officers and inmates, but also to actively devise and implement a system of supervision of its first level of correctional officers in accordance with law. The inmate and other female inmates were forced to participate in strip-shows and exotic dancing on three occasions over a one month period. (District of Columbia Jail)

U.S. District Court
SEXUAL ASSAULT

Peddle v. Sawyer, 64 F.Supp.2d 12 (D.Conn. 1999). An inmate sued prison officials alleging sexual abuse by a correctional officer. The district court held that the complaint stated a claim, under the theory of supervisory liability, for violation of the Violence Against Women Act (VAWA). The

female inmate alleged that prison officials assigned a male officer, whom they knew or should have known had a history of sexual misconduct, to posts where he had unsupervised contact with female inmates. According to the court, severe and repetitive sexual abuse of an inmate by a prison officer is not part of the penalty that criminal offenders pay for their offenses. (Federal Correctional Institution, Danbury, Connecticut)

2000

U.S. Appeals Court
TRANSSEXUAL

Cuoco v. Moritsugu, 222 F.3d 99 (2nd Cir. 2000). A pretrial detainee filed a pro se complaint alleging she was denied estrogen tablets necessitated by her status as a preoperative male to female transsexual. The appeals court dismissed the action finding that the prison medical director and chief medical officer were absolutely immune under the Public Health Service Act. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
SEXUAL ASSAULT
VAWA- Violence
Against Women Act

Daniels v. Delaware, 120 F.Supp.2d 411 (D.Del. 2000). A state inmate who had been raped by a correctional officer and became pregnant as a result, sued prison officials under § 1983 and the Violence Against Women Act (VAWA). The district court granted summary judgment in favor of the defendants. The court held that the inmate failed to establish that the officials had been deliberately indifferent to her health and safety, even though they had previously investigated the correctional officer for taking female inmates outside their cells after lockdown. The court noted that there was no evidence that the previous incident involved sexual misconduct and the officials had disciplined the officer and changed lock down procedures following the investigation. The court found that the inmate failed to establish a failure to train violation because the prison's training programs were found to be sufficient under national standards promulgated by the American Correctional Association. The offending officer had received an adequate number of training hours and the prison had received an award of excellence for its training programs. The officer's training had included training in cultural awareness, which included training in sexual harassment and inmate treatment, and he was trained regarding the prison's code of conduct, which prohibited sexual contact between inmates and guards. The court noted that personnel training standards for correctional institutions that were promulgated by national groups do not necessarily equate with the training standards required by the Eighth Amendment. (Delaware Women's Correctional Institute)

U.S. Appeals Court
SEXUAL
HARASSMENT
FAILURE TO
PROTECT

Daskalea v. District of Columbia, 227 F.3d 433 (D.C.Cir. 2000). A former District of Columbia jail inmate who had been forced to perform a striptease in front of other prisons and male and female guards, sued the District and corrections officials for § 1983 violations. The district court entered a jury verdict awarding \$350,000 in compensatory and \$5 million in punitive damages, and denied the defendants' motion for judgment as a matter of law. The appeals court affirmed in part and reversed in part. The appeals court held that the \$350,000 award for mental and emotional distress resulting from the § 1983 violation was reasonable, but that the former inmate was not entitled to punitive damages from the District for negligent supervision, because District law bars the imposition of such awards against the District. The mental and emotional distress award was supported, according to the court, by the fact that the inmate was denied library assistance because she refused to have sex with the librarian, she was attacked with the assistance of correctional officers, she was confined in isolation without underwear or a mattress, she felt constant stress, anxiety and dread of imminent sexual attack, she had to sleep during the day for fear of what guards might do to her at night, she suffered from insomnia and eating disorders, and spent months emotionally and psychologically debilitated, withdrawn and depressed. The appeals court agreed with the jury finding that the District's failure to train or supervise jail employees amounted to deliberate indifference toward the female inmate's constitutional rights, so that the District was liable under § 1983. The court noted that seven months prior to this incident the district court had found the District liable under § 1983 for being deliberately indifferent to repeated sexual abuse and harassment of female prisoners by correctional officers and for failing to train staff to prevent such misconduct. According to the court, the fact that the District jail officers sought to conceal the incident did not insulate the District from § 1983 liability based on its deliberate indifference. (District of Columbia Jail)

U.S. District Court
SEXUAL ASSAULT

Garcia v. Condarco, 114 F.Supp.2d 1158 (D.N.M. 2000). A female detainee filed a Fair Housing Act claim alleging that the city jail in which she had been confined was a "dwelling" within the meaning of FHA. The district court granted the defendants' motion to dismiss, finding that the jail was not a dwelling for FHA purposes. The detainee alleged she had been sexually abused by a jail officer. The officer had pled guilty to a criminal sexual penetration charge. The detainee asserted that the city defendants had discriminated against her on the basis of her sex in the provision of services and facilities. (Hobbs City Jail, New Mexico)

U.S. District Court
SEARCHES

Mason v. Village of Babylon, New York, 124 F.Supp.2d 807 (E.D.N.Y. 2000). An arrestee who was taken into custody based on a traffic warrant that was later determined to have been recalled, filed an action under § 1983 alleging false arrest and illegal search. The district court found that a no-contact partial strip search, incident to arrest violated the Fourth Amendment because neither the nature of the offense nor the circumstances of arrest raised any suspicion that would justify such an intrusion. The court noted that the unconstitutionality of a blanket strip-search policy had been well-established. The female arrestee was asked by a female arresting officer to lift her shirt, lower her pants, and rearrange her undergarments to dislodge any contraband that

might be concealed. (Village of Babylon, Second Precinct, New York)

U.S. Appeals Court
SEARCHES

Miller v. Kennebec County, 219 F.3d 8 (1st Cir. 2000). An arrestee brought a § 1983 action against an arresting officer, town, counties and county sheriffs alleging Fourth Amendment violations and state law claims arising out of her arrest and detention. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part and vacated and remanded in part. The appeals court held that the arresting officer was not entitled to qualified immunity because the warrant under which he brought the arrestee to jail explicitly directed that it was to be executed by bringing the defendant immediately before a sitting judge. The court also found that a fact question precluded summary judgment on the unreasonable strip search claim against the county where the arrestee was jailed. (Kennebec County and Knox County, Maine)

U.S. Appeals Court
SEXUAL ASSAULT
TRANSSEXUAL

Schwenk v. Hartford, 204 F.3d 1187 (9th Cir. 2000). A prisoner who was a pre-operative male to female transsexual sued a state prison officer and other prison officials under § 1983 and the Gender Motivated Violence Act (GMVA) alleging attempted rape by the officer. The district court denied the officer's motion for summary judgment and the appeals court affirmed in part and reversed in part. The appeals court held that GMVA applies with equal force to men and women and its protection extends to transsexuals. The appeals court found that evidence supported a finding of a gender-motivated attack but that the officer was entitled to qualified immunity because the law regarding gender motivation was not clearly established at the time of the assault. (Washington State Penitentiary in Walla Walla)

U.S. Appeals Court
SEARCHES

Skurstenis v. Jones, 236 F.3d 678 (11th Cir. 2000). A female detainee brought an action against a county sheriff and sheriff's department staff, alleging that a strip search of her pelvic region violated her Fourth and Fourteenth Amendment rights. The district court granted the defendants' motion for summary judgment in part and denied it in part. The appeals court affirmed in part, reversed in part, and remanded in part. The appeals court held that the jail policy that required each inmate to be strip-searched by a same-sex jail staff member, before being placed in a cell or detention room, violated the Fourth Amendment. But the court found that the detainee's possession of a handgun at the time of her arrest provided the "reasonable suspicion" needed to permit her strip search. The detainee was taken to a bathroom and observed by a female officer, who instructed the detainee to disrobe but did not conduct a body cavity search. A second medically-related search took place in the infirmary, with no one other than the detainee and a male nurses assistant present. The search was conducted pursuant to a contract between the county and a hospital, and involved an examination of the detainee's cranial and pubic hair for lice. The court held that the search was reasonable in manner and scope and did not violate the Fourth Amendment. (Shelby County Jail, Alabama)

U.S. District Court
SEARCHES

Wilson v. Shelby County, Ala., 95 F.Supp.2d 1258 (N.D.Ala. 2000). A female arrestee who was strip searched before being placed in jail following her arrest on charges of driving under the influence sued county officials for damages. The district court denied the defendants' motion to dismiss, finding that the policy of strip searching all jail admittees, regardless of personal circumstances, violated the bodily privacy rights of the arrestee. The court held that the sheriff was not entitled to qualified immunity from suit. The arrestee was kept in an isolated cell with no opportunity to interact with the general population. The court noted that a strip search of an arrestee charged with a minor offense may be conducted only when there is a reasonable suspicion that the arrestee may be secreting drugs, weapons or other contraband on or in his or her body. The arrestee was an 18-year-old high school student who had been stopped at a drivers' license checkpoint and registered 0.08 percent blood alcohol. According to the arrestee, she was taken into a restroom by a female deputy and was ordered to strip, and then according to the arrestee "she checked my breasts and behind my ears and in my mouth and nose...and then she told me to squat and spread my butt apart and cough three times." (Shelby Co. Jail, Alabama)

2001

U.S. District Court
EQUAL PROTECTION
EXERCISE

Booth v. Barton County, KS, 157 F.Supp.2d 1178 (D.Kan. 2001). An inmate and a former inmate brought an action seeking injunctive relief under § 1983, alleging unconstitutional conditions of confinement at a county jail. The district court granted summary judgment in favor of the defendants. The court found that the former inmate's claims, which sought only injunctive relief, were moot since the inmate had been released and was no longer a prisoner. The court refused to let the female inmate raise claims of gender-based unequal treatment at the summary judgment stage of trial because she failed to introduce the claims in her complaint, or at the pretrial conference. The female inmate had asked permission to allege that the jail had an insufficient number of female officers to provide equal exercise to female inmates, and that the jail's male-only trustee policy resulted in more exercise time for male inmates. The jail was allegedly designed to accommodate 19 inmates but had a policy of housing up to 72 inmates. (Barton County Jail, Kansas)

U.S. District Court
SEARCHES
SEXUAL ASSAULT

Colman v. Vasquez, 142 F.Supp.2d 226 (D.Conn. 2001). A female inmate placed in a special prison unit for victims of sexual abuse filed a § 1983 action against prison officials alleging that she was sexually abused by a male guard, and challenging the practice of having male guards conduct pat searches of female inmates. The district court denied the defendants' motions to

dismiss, finding that fact issues remained. The court found that a male prison guard's repeated, involuntary, harassing and intimidating contact with a female inmate can constitute a substantial risk of harm under the Eighth Amendment, and that prison officials were required to investigate the female inmate's complaint that she had been sexually assaulted. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
SEXUAL ASSAULT

Dorsey v. Givens, 209 F.Supp.2d 850 (N.D.Ill. 2001). A former county jail inmate brought an action against a correctional officer, detention facility, and county sheriff, alleging she had been subjected to improper sexual touching by the officer. The district court held that the officer's alleged sexual misconduct was not within the scope of his employment, and he was therefore not entitled to indemnification from the sheriff. The court noted that sexual misconduct involving a prisoner is both a violation of work rules and a crime. The officer was terminated and was eventually convicted of five counts of Custodial Sexual Misconduct, none of which involved the plaintiff. (Will County Detention Center, Illinois)

U.S. District Court
SEARCHES

Gonzalez v. City of Schenectady, 141 F.Supp.2d 304 (N.D.N.Y. 2001). Male and female detainees sued a city claiming they were strip searched under an unconstitutional city policy. The district court held that the city policy of strip searching all detainees who were awaiting court action violated the Fourth Amendment. The court found that the police did not have reasonable suspicion to strip search a male detainee and a female detainee, who were charged with minor offenses. The court noted that the Fourth Amendment precludes strip or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless officials have reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, particular circumstances of the arrestee, or of the arrest. (City of Schenectady, N.Y.)

U.S. District Court
SEXUAL ASSAULT
MEDICAL CARE

Goode v. Correctional Medical Services, 168 F.Supp.2d 289 (D.Del. 2001). An inmate sued various prison officials, a third party medical contractor, and the contractor's nursing employees alleging excessive force, sexual assault and Eighth Amendment violations in connection with an obstetric examination. The district court held that the inmate had sufficiently exhausted administrative remedies, the third-party medical contractor had no civil rights liability on the basis of respondeat superior, and the inmate stated an Eighth Amendment claim against the employees. The employees allegedly hugged and kissed the inmate during the examination, and conducted an unauthorized internal examination. The incident allegedly caused the inmate light bleeding, caused her blood pressure to rise, and caused her to go into labor four weeks early. (Baylor Women's Correctional Facility, Delaware)

U.S. District Court
SEXUAL HARASSMENT

Paz v. Weir, 137 F.Supp.2d 782 (S.D.Tex. 2001). A female jail inmate brought an action against a county under § 1983 and other federal and state laws for violations of her rights resulting from an alleged sexual assault by the jail's chaplain. The district court found genuine issues of material fact existed regarding the inmate's § 1983 claims against the county arising out of alleged unconstitutional invasions of her right to bodily integrity and retaliation for the exercise of her right to free speech. The court also found that issues of material fact existed as to whether the jail chaplain coerced the female inmate or used his position to prevail upon her to engage in repeated sexual acts, while simultaneously assured her that God would forgive her actions. (Harris Co. Jail, Texas)

U.S. District Court
SEXUAL HARASSMENT
WORK RELEASE

Smith v. Cochran, 216 F.Supp.2d 1286 (N.D.Okla. 2001). A female former inmate filed a § 1983 suit alleging that a state drivers license examiner forced her to have sex with him while she was on work release at the examination center. The district court denied the examiner's motion for summary judgment. The court held that the examiner was acting under the color of state law while he was supervising the inmate and that he was not entitled to qualified immunity. The court found the examiner's alleged actions to be sufficiently outrageous to support the inmate's claim for intentional infliction of emotional distress. The court also held that the examiner's alleged sexual contacts with the prisoner while she was on work release demonstrated use of excessive force sufficiently prevalent to demonstrate a pattern that resulted in alleged injuries that were harmful enough to implicate the Eighth Amendment. The court noted that the work release contract gave the examiner control of the inmate and that the inmate was not free to leave while on work release, and could be subject to punishment if she disobeyed the examiner's commands. (Tulsa Comm'y Corr. Ctr., Oklahoma)

U.S. Appeals Court
SEARCHES

Wilson v. Jones, 251 F.3d 1340 (11th Cir. 2001). A female arrestee brought a civil rights action against a county sheriff challenging her strip search following her arrest for driving under the influence. The district court denied the sheriff's motion to dismiss. The appeals court reversed. The appeals court held that the strip search violated the arrestee's Fourth Amendment privacy rights, but that the sheriff was entitled to qualified immunity because the unconstitutionality of the county's blanket strip search policy was not clearly established at the time of the search. The arrestee had been strip searched by a female corrections officer before being placed in a cell with the general female population because the county did not have separate facilities to temporarily hold female detainees. (Shelby County Jail, Alabama)

U.S. District Court
TRANSSEXUAL

Wolfe v. Horn, 130 F.Supp.2d 648 (E.D.Pa. 2001). A pre-operative transsexual inmate brought a § 1983 action against prison officials and medical professionals, alleging that their failure to permit him to continue hormone treatment therapy violated his constitutional rights. The

district court ruled that the prison officials reasonably relied on the medical professionals' opinions as to the propriety of withdrawing the inmate's hormonal therapy and were entitled to qualified immunity on the inmate's § 1983 claim. The court held that the officials did not violate the equal protection rights of the inmate who was suffering from a gender identity disorder by refusing to permit the inmate to grow long hair, even if other inmates were allowed to grow long hair for religious reasons, in light of the potential for institutional disruption and violence if the inmate were allowed to express a feminine gender identity. But the court found that fact issues as to whether medical professionals were deliberately indifferent to treating the inmate, and when the prison officials made the final decision to discontinue hormonal treatment, precluding summary judgment for the defendants. (SCI-Camp Hill, Pennsylvania)

2002

U.S. District Court
CONDITIONS

Bobbitt v. Detroit Edison Co., 216 F.Supp.2d 669 (E.D.Mich. 2002). An arrestee filed a § 1983 action in state court alleging that city police officers violated her constitutional rights in connection with her arrest for disorderly conduct. The district court granted summary judgment in favor of the defendants. The court held that the arrestee failed to establish liability with her allegations that a city jail was not clean, did not provide sufficient seating, and did not provide ready access to a telephone. According to the court, the arrestee's assertions that the city maintained inadequate policies for training and hiring its police officers, and that an arresting officer had been involved in one other incident of alleged misconduct, were insufficient to subject the city to liability under § 1983 for failing to provide adequate training. The arrestee alleged she was forced to stand for approximately five hours in a police holding cell, that the cell contained only a 4-inch concrete slab on which to sit, and that the slab was too low. (Eighth Precinct, Detroit Police Department, Michigan)

U.S. Appeals Court
SEARCHES

Cuesta v. School Bd. of Miami-Dade County, Fla., 285 F.3d 962 (11th Cir. 2002). A high school student sued a school board and a county under § 1983 alleging she was subjected to an unconstitutional strip search. The district court entered summary judgment for the school board and county and the student appealed. The appeals court affirmed, finding that there was reasonable suspicion to strip search the student. The student had distributed, with eight other students, an anonymous pamphlet on school grounds that included an essay in which the author "wondered what would happen" if he shot the principal, teachers or other students. The students were arrested for hate crime violations and transported to juvenile and adult detention facilities, depending on their ages. The plaintiff student, who was over 18 years old, was booked and strip searched at an adult detention facility pursuant to a policy that required the search of all newly-arrested felons. (Turner Guildford Knight Correctional Facility, Metro-Dade County, Florida)

U.S. Appeals Court
SEARCHES

Farmer v. Perrill, 288 F.3d 1254 (10th Cir. 2002). A female federal prisoner brought a civil rights action against prison officials, alleging Fourth Amendment violations arising from strip searches. The district court denied summary judgment for the officials and refused to dismiss the action. The appeals court affirmed, finding that the prisoner's right not to be subjected to a humiliating strip search in full view of several others was "clearly established" at the time of the search in question. The court held that summary judgment was precluded because genuine issues of material fact existed as to whether prison officials had a legitimate penological need to conduct the strip search of the prisoner in an open area and in view of inmates and staff. According to the court, while a prison inmate's right to privacy must yield to a prison's need to maintain security, "it does not vanish altogether." (Englewood Federal Correctional Facility, Colorado)

U.S. Appeals Court
SEXUAL ASSAULT
SEXUAL HARASSMENT

Ford v. County of Oakland, 35 Fed.Appx. 393 (6th Cir. 2002). A female county jail inmate brought a § 1983 action against a county for allegedly maintaining a custom or policy of ignoring sexual harassment and assault claims, and creating an atmosphere that facilitated her rape by a police deputy who was supervising her. The district court granted summary judgment as to the § 1983 municipal liability claim, and the appeals court affirmed. Although the deputy was not suspended from duty until after the sheriff's office had completed its investigation, the court noted that the county had a policy against sexual harassment, disciplined the deputy after the results of a state police report became available, and proffered evidence of three other cases in which officers were disciplined for sexual harassment and assault at the county jail. (Oakland County Jail, Michigan)

U.S. District Court
FAILURE TO
PROTECT
FAILURE TO
SUPERVISE

Gallardo v. Dicarlo, 203 F.Supp.2d 1160 (C.D.Cal. 2002). A state prisoner brought a § 1983 action against a prison warden alleging Fifth Amendment and state law claims. The district court found that the prisoner stated an Eighth Amendment excessive force claim against the warden and that the warden was not entitled to qualified immunity. The prisoner alleged that the warden encouraged the use of excessive force, and that he sustained physical injuries from officers' use of force on him that required a 31-day hospitalization and resulted in permanent physical injuries. (California State Prison, Chino)

U.S. Appeals Court
MEDICAL CARE

Hallett v. Morgan, 287 F.3d 1193 (9th Cir. 2002). In a class action, female prisoners at a state prison secured a consent decree that addressed health care concerns. The prisoners challenged the prison's attempt to end the decree, sought additional time for court involvement and moved to have prison officials held in contempt for past violations of the decree. The district court denied the prisoners' motions and granted the prison officials' motion to terminate the consent

decree. The prisoners appealed and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that dental care and mental health care did not violate the Eighth Amendment, but ordered the district court to consider retrospective relief on remand. The court noted that the district court should have considered whether officials were in contempt for failing to comply with other medical care provisions of the consent decree. (Washington Corrections Center for Women)

U.S. Appeals Court
MEDICAL CARE

Hallett v. Morgan, 296 F.3d 732 (9th Cir. 2002). A class of prisoners at a women's state prison who brought a § 1983 action against prison officials moved to extend jurisdiction over a consent decree for an additional period of time, to have prison officials held in contempt, and to compel discovery. The district court denied the motions and granted the prison officials' motion to terminate the consent decree. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that dental care and mental health conditions at the prison did not violate the Eighth Amendment. The appeals court found that officials' substantial compliance with the consent decree judgment was an acceptable defense to the prisoners motion to hold the officials in civil contempt for past violations of the decree. The court remanded the case for reconsideration of allegations that the officials failed to comply with consent decree requirements regarding medical care. (Washington Corrections Center for Women)

U.S. District Court
SEXUAL ASSAULT
SEXUAL
HARASSMENT

Hammond v. Gordon County, 316 F.Supp.2d 1262 (N.D.Ga. 2002). Female former county jail inmates sued county officials and officers, claiming they were subjected to cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment, in part, for the defendants. The court held that a claim was stated by allegations that a male officer required female inmates to strip and engage in lewd behavior in return for female hygiene items and toiletries, and that the officer was not entitled to qualified immunity. The court denied summary judgment to higher jail officials in connection with a claim that they violated the Eighth Amendment by showing deliberate indifference to officer-inflicted harm of inmates. The court also denied summary judgment and qualified immunity for a deputy jailer who was claimed to have intentionally inflicted emotional harm and assault and battery on female inmates. The court granted qualified immunity to an officer on a claim that he violated the rights of a female inmate by opening the door of her cell and allowing a male inmate to enter, finding that there were no precedents establishing that the conduct was illegal and the opening of the door was not so obviously unlawful that immunity should not apply. According to the court, an inmate stated an Eighth Amendment claim against an officer when she alleged that the officer had sex with her, and the officer was not entitled to qualified immunity. But the court did not find deliberate indifference on the part of an officer who allegedly offered a female inmate cigarettes if she would expose her breasts, noting that the officer could not, under the circumstances, be placed on notice that his conduct was unacceptable. The court granted qualified immunity to a jail administrator and sheriff from a claim that they were deliberately indifferent by not intervening when male officers required female inmates to strip in order to receive toiletries and instigated and participated in sexual activities with inmates, because the jail administrator and sheriff did not violate any clearly established law when they did not intervene. (Gordon County Jail, Georgia)

U.S. District Court
SEARCHES
EQUAL PROTECTION

Helton v. U.S., 191 F.Supp.2d 179 (D.D.C. 2002). Female arrestees brought an action under the Federal Tort Claims Act (FTCA) alleging that United States Marshals conducted unlawful searches and invasions of their privacy. The district court held that the alleged strip search of arrestees satisfied the elements of a tort intrusion upon seclusion. The court noted that the Fourth Amendment precludes police or prison officials from conducting a strip search of an individual arrested for misdemeanors or other minor offenses, unless there is reasonable suspicion that the individual is concealing contraband or weapons. The five women plaintiffs had been arrested for unlawful entry in connection with an "anti-fur" demonstration at a department store. According to their complaint, they were compelled "to remove clothing and submit to a strip and squat search" while six men arrested with them were not subjected to such searches. (U.S. Marshals Service)

U.S. Appeals Court
PRIVACY
RESTRAINTS

Hill v. McKinley, 311 F.3d 899 (8th Cir. 2002). A prisoner brought § 1983 action alleging jail officers and a sheriff violated her Fourth Amendment right to privacy, and her privacy rights under state law. The prisoner had been marched down a hallway naked, escorted by staff members of the opposite sex, and was then strapped face down to a restrainer board in a spread-eagle position. The district court denied the defendants' request for judgment as a matter of law, refused to reduce damages, and granted attorney fees to the prisoner. The appeals court affirmed in part, reversed in part, and remanded with directions. The appeals court held that the use of male officers in an otherwise justified transfer of an unruly and naked female prisoner did not violate the Fourth Amendment. The court held that the prisoner's Fourth Amendment rights were violated when she was allowed to remain completely exposed to male officers on a restrainer board for a substantial period of time after the threat to security and safety had passed. But the court found that the officers were entitled to qualified immunity because their actions did not violate clearly established law, noting that prisoners were entitled to very narrow zones of privacy. The court found that evidence supported the verdict for the prisoner on her state law privacy claim and the \$2,500 compensatory damage award for invasion of privacy. (Story County Jail, Iowa)

U.S. Appeals Court
EQUAL PROTECTION
PRIVACY

Oliver v. Scott, 276 F.3d 736 (5th Cir. 2002). A male prisoner brought a civil rights suit against a prison warden, correctional officers, and private contractors who operated a state jail facility, alleging constitutional violations arising from cross-gender surveillance and strip searches, and the absence of partitions in male shower areas. The district court dismissed a portion of the complaint for failure to state a claim and entered summary judgment in favor of the defendants for the remaining issues. The prisoner appealed and the appeals court affirmed. The appeals court held that any minimal right to bodily privacy possessed by the male prisoner did not preclude cross-gender surveillance and that such surveillance, in the absence of partitions in the male shower area, did not violate the prisoner's equal protection rights. The court noted that fundamental implied rights—marriage, family procreation, and the right of bodily integrity—do not include a right of prisoners to avoid surveillance by members of the opposite sex. According to the court, the existence of privacy partitions in female inmates' showers and the absence of male guard surveillance of female inmates did not violate the equal protection rights of the male prisoner because male prisoners were not similarly situated to female prisoners due to their conviction for more violent crimes, larger numbers, and higher incidence of violent gang activity and sexual predation. The court found that the prisoner's complaint did not identify a specific unconstitutional policy that correctional officers allegedly violated by engaging in cross-gender strip searches and monitoring of prisoners. (Dawson State Jail Facility, Texas)

U.S. District Court
SEXUAL ASSAULT

Ortiz v. Voinovich, 211 F.Supp.2d 917 (S.D. Ohio 2002). An inmate sued state officials alleging that she was sexually assaulted by a corrections officer and that she was subjected to cruel and unusual punishment in violation of her Eighth Amendment rights. The district granted summary judgment for the defendants in part, and denied it in part. The court held that fact questions as to whether the inmate feared further sexual assault by the corrections officer, whether the inmate made a cottage manager aware of her fear of assault, whether the cottage manager was deliberately indifferent to the inmate's notification regarding a threatened sexual assault, and whether the proffered reasons for placing the inmate in segregation was a pretext. The inmate alleged that a corrections officer went into her room and fondled her breasts and made lewd comments, and then threatened to "get her tomorrow." The inmate said she notified corrections officials of the assault and threat and that the following day the officer sexually assaulted her after she went to sleep. She alleged that she was placed in solitary confinement instead of protective custody after she reported the assault. The court found no evidence to support the claim that a prison investigator and warden had knowledge of inadequate conditions while the inmate was in segregation. The inmate alleged she was provided with inadequate heat, bedding, sanitation and access to medical treatment while segregated. (Ohio Reformatory for Women at Marysville)

U.S. Appeals Court
SEXUAL ASSAULT
FAILURE TO PROTECT

Riley v. Olk-Long, 282 F.3d 592 (8th Cir. 2002). A female inmate brought a § 1983 action against prison officials arising from a sexual assault by a prison guard. A jury found in the inmate's favor and the officials moved for judgment as a matter of law or for a new trial. The district court denied the motions and the appeals court affirmed. The appeals court held that the issue of whether a warden and a director of security were deliberately indifferent to the substantial risk of harm that the guard presented to female inmates was a matter for the jury. The guard had asked the inmate whether she was having a sexual relationship with her roommate at the facility and if so, if he could watch. The guard later attempted to reach under the inmate's nightshirt but she backed away. The guard continued to harass the inmate and at one point grabbed her from behind and rubbed up against her while grabbing her breasts. The inmate did not report these incidents to prison officials because she doubted she would be believed and feared the resulting discipline. Later, the guard entered the inmate's cell and forcibly had intercourse with her. Fearing she would become pregnant she began performing oral sex on him. Another inmate witnessed the sexual encounter and reported it to prison officials. The officials investigated and subsequently allowed the guard to resign. He was later charged with, and pleaded guilty to, sexual misconduct with an inmate. The district court jury found in favor of the inmate, awarding her compensatory damages of \$15,000 and a total of \$30,000 in punitive damages. (Iowa Correctional Institution for Women)

U.S. District Court
SEARCHES
MEDICAL CARE

Turner v. Kight, 192 F.Supp.2d 391 (D.Md. 2002). A female detainee who was arrested on an outstanding warrant associated with a civil matter and detained at a jail brought an action against county and state officials. The district court granted summary judgment for the defendants. The court held that arresting and booking officers were deliberately indifferent to the detainee's serious medical needs when they allegedly removed a neck brace and seized medication, ignoring her complaints of pain and muscle spasm. The detainee sometimes limped and walked with a cane, but the court found that the detainee's alleged pain did not rise to the level of a serious medical need. The court granted qualified immunity to the officers, finding that there was no indication that the officers actually knew of, and ignored, a serious need for medical care. The court also found that the officers were not deliberately indifferent by failing to dispense medication in response to the detainee's complaints of pain, where the officers were not permitted to dispense medication and they notified the detention facility's medical staff of a nonemergency situation, who did not respond during the six hours the detainee was confined. The court held that the detainee's allegation that she was brutally handcuffed did not present a constitutional violation, particularly in the absence of any explanation of how the handcuffing led to any injury. The court held that if a strip search was conducted by an officer of the same sex during the processing of the detainee, it did not rise to the level of a Fourth Amendment

violation, where the search was conducted in private and there was no physical contact between the detention officer and the detainee. (Montgomery County Detention Center, Maryland)

2003

U.S. Appeals Court
MEDICAL CARE
GID- Gender Identity
Disorder

De'Lonta v. Angelone, 330 F.3d 630 (4th Cir. 2003). A female inmate brought a civil rights action alleging that prison officials and doctors had denied her adequate medical treatment for her gender identity disorder (GID), in violation of the Eighth Amendment. The district court dismissed the suit for failure to state a claim and the inmate appealed. The appeals court reversed and remanded, finding that the inmate stated a claim by alleging inadequate medical treatment to prevent self-mutilation upon withdrawal of GID hormone therapy. The court noted that the inmate's need for continued protection from self-mutilation was a serious medical need to which prison officials could not be deliberately indifferent. (Mecklenburg Corr'l. Center, Virginia)

U.S. District Court
CONDITIONS

Laube v. Haley, 242 F.Supp.2d 1150 (M.D.Ala. 2003). Female prisoners brought an action against prison officials, challenging conditions of their confinement at certain state prisons. The district court granted injunctive relief, including an order that the officials submit a plan for alleviating the conditions. Following submission of the plan, the court rejected the plan, finding it unacceptable to the extent that it asked the federal court to enjoin further transfer from county jails of prisoners eligible for state incarceration. The court noted that under the Prison Litigation Reform Act (PLRA), it could not prohibit the transfer, and in any event, such an order would conflict with a state court order that prisons accept those prisoners. The court held that lack of funding was no excuse for the deficiencies in the plan. (Alabama State Prison System, Tutwiler Prison for Women)

U.S. District Court
SEXUAL ASSAULT

Morris v. Eversley, 282 F.Supp.2d 196 (S.D.N.Y. 2003). A former inmate brought a § 1983 alleging that she had been sexually assaulted by a correctional officer. The court granted summary judgment in favor of the defendants, finding that the inmate failed to show that the defendants had any personal involvement in the alleged deprivation of her rights. The inmate alleged that a male correctional officer entered her cell one night and sexually assaulted her, and that this was but one example of an ongoing pattern and practice at the prison. (Bayview Correctional Facility, New York)

U.S. District Court
SEARCHES
SEXUAL HARASS-
MENT

Roland v. Murphy, 289 F.Supp.2d 321 (E.D.N.Y. 2003). A female county inmate sued corrections officers under § 1983 alleging that they improperly subjected her to a body cavity search. The district court denied the officers' motion for judgment on the pleadings, finding that the inmate had complied with the requirements of the Prison Litigation Reform Act (PLRA) by informally exhausting administrative remedies. The court noted that the inmate had informed sheriff's department internal affairs staff and the district attorney's office about the allegedly illegal search, triggering investigations that recommended dismissal of her case. The inmate alleged that she was subjected to a body cavity search that was conducted in an inappropriate manner at an inappropriate location. The inmate admitted that officers discovered contraband during a search of her cell and that she had attempted to hide contraband pills in her underpants in the past. She did not contest the necessity for the search, but objected to the manner in which it was conducted. The inmate claimed that the search was conducted in her cell by four female officers, in full view of three male officers who observed her private parts and made related crude remarks. (Nassau County Correctional Center, New York)

2004

U.S. District Court
SEXUAL HARASS-
MENT
FAILURE TO PROTECT

Bolton v. U.S., 347 F.Supp.2d 1218 (N.D.Fla. 2004). A female inmate brought an action against the federal Bureau of Prisons and a correctional officer, alleging that the officer coerced her into sex by threats of adverse official action. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that the government did not negligently hire and train the officer, but that fact issues remained as to whether the government negligently supervised and retained the officer. The court found that genuine issues of material fact, regarding whether the officer's supervisor knew that the female inmate was at risk of sexual assault by the officer, precluding summary judgment. The officer purportedly threatened to send the inmate to a special housing unit and affect her release date unless she submitted to his sexual demands. (Federal Bureau of Prisons, Florida)

U.S. Appeals Court
TRANSSEXUAL
FAILURE TO PROTECT

Greene v. Bowles, 361 F.3d 290 (6th Cir. 2004). An inmate who was a pre-operative male-to-female transsexual who was incarcerated in a prison for males, brought a § 1983 action against corrections officials, alleging deliberate indifference to her safety. The district court granted summary judgment in favor of a warden and the inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by fact issues as to whether the warden knew of the risk presented when the transsexual inmate was housed with an inmate considered to be a predatory inmate, and whether the warden knew of that inmate's status as a predatory inmate. The court noted that the liability of the warden was not precluded by a jury verdict against subordinate officials who were found not liable. (Warren Correctional Institution, Ohio)

U.S. Appeals Court
PRIVACY
SEARCHES

Mills v. City of Barbourville, 389 F.3d 568 (6th Cir. 2004). An arrestee brought a § 1983 action claiming that her constitutional rights were violated when a male jailer saw her bare chest during a search at the jail after her arrest. The district court dismissed some of the defendants and granted summary judgment in favor of the remaining defendants, and the arrestee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the fact that a male jail employee may have seen the arrestee's bare breasts accidentally as he was walking by while the arrestee was being searched, was not a Fourth Amendment violation in the absence of any evidence that either the normal search policy was unconstitutional or that the search was carried out in an unconstitutional manner. The court noted that the search was conducted by female jailers. (Knox County Jail, Kentucky)

U.S. District Court
SEARCHES
PRIVACY

Smook v. Minnehaha County, 340 F.Supp.2d 1037 (D.S.D. 2004). Former detainees at a county juvenile detention center brought a § 1983 action challenging the center's policy of strip-searching all juveniles admitted to the facility, regardless of the seriousness of the charged offense or the existence of suspicion. The court granted partial summary judgment in favor of the detainees. The court held that the suspicionless strip-searches of all juveniles could not be based on the officials' state statutory duty to report child abuse or neglect, where the duty to report was not a duty to detect, and any interest the officials had in detecting abuse was outweighed by the detainees' privacy interests. According to the court, the strip-search of non-felony detainees violated their rights to freedom from unreasonable searches, even though the center had implemented a policy requiring a two-hour grace period before a search. The court found that the officials' legitimate security interest in preventing the introduction of weapons and contraband was outweighed by the severe privacy intrusion entailed by the searches, given the lack of evidence of more than minimal smuggling of weapons and contraband into the facility. The court found a Fourth Amendment violation when a female detainee who was arrested for a curfew violation was strip-searched, even though she was permitted to keep her bra and underwear on, because the offense was not normally associated with weapons or drugs, there was no suspicion that the detainee was carrying or concealing a weapon or contraband and there was no indication of a prior delinquency record. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. Appeals Court
ABORTION

Victoria W. v. Larpenter, 369 F.3d 475 (5th Cir. 2004). A female prisoner brought a civil rights action challenging a prison's policy of requiring her to obtain a court order if she wanted to receive an elective abortion. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the policy was reasonably related to legitimate penological interests in helping to maintain inmate security, avoiding prison liability, and conserving prison resources. (Terrebonne Parish Criminal Justice Complex, Louisiana)

U.S. Appeals Court
FAILURE TO PROTECT

Whiting v. Marathon County Sheriff's Dept., 382 F.3d 700 (7th Cir. 2004). A prisoner brought a suit against a sheriff's department, jail officials and guards for allegedly violating her Eighth Amendment rights. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that jail officials who had no knowledge of a no-contact order prohibiting a second inmate from contacting the prisoner, were not deliberately indifferent to a substantial risk of serious harm to the prisoner when they placed her in an interview room with the inmate and his attorney. While she was in the room with the inmate and his attorney, she was coerced and threatened. (Marathon County Jail, Wisconsin)

2005

U.S. District Court
MEDICAL CARE
RESTRAINTS
HYGIENE

Atkins v. County of Orange, 372 F.Supp.2d 377 (S.D.N.Y. 2005). Jail inmates brought a § 1983 action against a county and corrections officers, alleging indifference to their mental health needs and mistreatment. The defendants moved to preclude expert witness testimony and for partial summary judgment. The district court granted summary judgment in part and denied it in part. The district court held that summary judgment was precluded because fact issues existed as to whether correctional officials deprived one inmate of water and basic hygiene products. According to the court, the failure to provide a prisoner with toilet articles including soap, razors, combs, toothpaste, toilet paper, access to a mirror, and sanitary napkins to female prisoners constitutes denial of personal hygiene and sanitary living conditions, for the purpose of a claim challenging conditions of confinement. The court denied summary judgment on this issue. The court also found genuine issues of material fact as to whether corrections officers used excessive force against a jail inmate by placing her in a restraint chair after she allegedly threw urine and feces from her cell. The court found that the alleged act of serving food to a jail inmate on a napkin or paper towel on one occasion did not amount to a constitutional deprivation. The court found no deliberate indifference based on a three-day delay between the time an inmate was booked and the time she was seen by a psychiatrist, or based on the fact that on several occasions she missed doses of her medication because she was out of her cell at the time of the scheduled administration of her medications. The court noted that there was no showing that the inmate was harmed as the result of the conduct, and that her medication schedule was

switched to evenings to accommodate her as soon as the forensic clinic was notified that she had missed some of her medications. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. District Court
SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who had committed suicide in a holding cell brought an action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The district court granted summary judgment for the defendants. The court held the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide and had not threatened or attempted suicide. The court noted that the detainee's intoxication was not, by itself, an indication of a suicidal tendency. The court found the city was not deliberately indifferent, where it had no history of numerous suicides by detainees, the city had policies for removing harmful items from detainees, and the city placed a video monitor in a cell following a previous suicide. (Scranton Police Department, Pennsylvania)

U.S. District Court
RESTRAINTS
PRIVACY

Esmont v. City of New York, 371 F.Supp.2d 202 (E.D.N.Y. 2005). An arrestee filed a § 1983 action alleging that city health inspectors and police officers violated her constitutional rights during her arrest and detention for violations of a city nuisance law. The district court granted summary judgment in favor of the defendants. The court held that the officials were not deliberately indifferent to the arrestee's serious medical needs when they did not comply with the arrestee's request for hot tea during an asthma attack, but called emergency medical services instead. The female detainee was handcuffed to a cross bar outside of a holding cell for over 7 hours, with no place to rest her elbow. She was required to use a bathroom that was monitored by a security camera and an officer insisted on watching her while she used the bathroom. She sought medical attention two days after her release for damage caused to her wrist by the handcuffing. The court held that the detainee was not exposed to excessive force, where the jail had only one cell and officials had a policy of not placing prisoners of opposite sexes in the cell together. The court noted that there was no evidence that the handcuffs were too tight, and the arrestee did not request that her handcuffs be loosened. (City of New York Police Department)

U.S. Appeals Court
SEXUAL ASSAULT

Gonzales v. Martinez, 403 F.3d 1179 (10th Cir. 2005). A female inmate who was sexually assaulted at a county jail brought a civil rights action against the county, county sheriff and jail officials. The district court entered summary judgment in favor of the sheriff and the inmate appealed. The appeals court reversed and remanded, finding that summary judgment was precluded by a genuine issue of material fact as to whether the sheriff had the requisite knowledge of a substantial risk of harm to inmates because of conditions at the jail. The female inmate was sexually assaulted on more than one occasion by the jail administrator and a jail officer. The administrator and officer were suspended and were later charged with, and convicted of, the assaults. (Huerfano County Jail, Colorado)

U.S. Appeals Court
FAILURE TO PROTECT
CONDITIONS
SEARCHES

Hart v. Sheahan, 396 F.3d 887 (7th Cir. 2005). Female pretrial detainees brought an action against a county and jail superintendent alleging deprivation of liberty without due process. The district court dismissed the case and the detainees appealed. The appeals court reversed and remanded, finding that the detainees stated a claim upon which relief could be granted. The detainees alleged that during monthly lockdown searches of the jail, they were confined for 48 to 50 hours at a time to their cells, where they were not under observation or within hailing distance of correctional officers. The detainees alleged that serious injuries resulted from their inability to get the officers' attention during a crisis. The court noted that an alternative procedure was available to the jail that would allow inmates in each locked tier to be released from their cells after that tier was searched, resulting in shorter lockdown periods. (Cook County Jail, Illinois)

U.S. District Court
SEXUAL ASSAULT

K.M. v. Alabama Dept. of Youth Services, 360 F.Supp.2d 1253 (M.D.Ala. 2005). Former juvenile detainees sued the Alabama Department of Youth Services (DYS), a former DHS employee, and others under § 1983 and state law, alleging that they were sexually and physically assaulted and harassed while in DHS custody. The former employee moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee violated a detainee's due process right to bodily integrity, and whether a detainee suffered emotional distress so severe that no reasonable person could be expected to endure it, as the result of a sexual assault by the employee. The court noted that even if a juvenile detainee had serious mental health problems before an employee allegedly inserted his finger into her vagina, that fact would not preclude a finding that any mental distress she experienced was caused by the employee, for the purposes of the Alabama tort of outrage. The court found that the employee was not protected by state-agent immunity under Alabama law because the alleged acts were not committed in the performance of his job-related duties. (Department of Youth Services, Chalkville Campus, Alabama)

U.S. District Court
SUICIDE

Mann ex rel. Terrazas v. Lopez, 404 F.Supp.2d 932 (W.D.Tex. 2005). Representatives of the estates of two detainees who had committed suicide while confined brought an action against a sheriff and jail officers, alleging failure to supervise and failure to train. The district court found that the sheriff was entitled to qualified immunity for failing to prevent the detainees' suicides, where there was no evidence that the sheriff was personally aware of any suicidal thoughts the detainees might have had and did not personally direct any actions involving the detainees during their incarceration. The court ordered further proceedings to determine if the sheriff's failure to modify his policies regarding potentially suicidal detainees was an intentional choice, or merely unintentionally negligent oversight. One inmate was known to have mental health problems and was housed in a mental health unit that provided a 1 to 18 officer to inmate ratio, compared to the 1 to 48 ratio required by state standards. The inmate hanged himself using a torn-up bed sheet. The other inmate was being held in a new detox cell and was found hanging four minutes after she had been visually observed by an officer. She also used a bed sheet to hang herself. (Bexar County Adult Detention Center, Texas)

U.S. Appeals Court
MEDICAL CARE

Mata v. Saiz, 427 F.3d 745 (10th Cir. 2005). A state inmate sued a prison's licensed practical nurses (LPN), registered nurse (RN), and nurse practitioner (NP) under § 1983 alleging Eighth and Fourteenth Amendment violations. The district court entered summary judgment for the LPNs and RN, and partial summary judgment for the NP. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the inmate's alleged severe chest pain and subsequent heart attack, if proven, were sufficiently serious to satisfy the objective element of the test for deliberate indifference. The court found that fact issues existed as to whether the evening LPN was deliberately indifferent when she allegedly told the inmate that there was nothing she could do about her chest pains and that the prisoner would have to wait until the morning. (Pueblo Minimum Center, Colorado Department of Corrections)

U.S. Appeals Court
MEDICAL CARE
PREGNANCY

Pool v. Sebastian County, Ark., 418 F.3d 934 (8th Cir. 2005). A county inmate sued jail officials under § 1983 alleging that her miscarriage resulted from the officials' deliberate indifference to her serious medical needs, in violation of the Eighth Amendment. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed in part and dismissed in part. The court found that the facts alleged by the inmate, if proven, indicated that she had a need for medical attention that would have been obvious to a layperson, and therefore had a serious medical need. The inmate alleged that she had informed jail officials that she was pregnant, bleeding and passing blood clots, and that she was in extreme pain from cramping to the point that it affected her ability to perform routine daily functions. (Sebastian County Detention Center, Arkansas)

U.S. Appeals Court
TRANSSEXUAL

Praylor v. Texas Dept. of Criminal Justice, 430 F.3d 1208 (5th Cir. 2005). A transsexual state prison inmate brought a suit, asserting that denial of his request for hormone therapy constituted cruel and unusual punishment. The district court denied relief and the inmate appealed. The appeals court affirmed. The court held that declining to provide hormone treatment did not amount to deliberate indifference to the inmate's serious medical needs, in violation of the Eighth Amendment. The court noted that the prison had a policy for treating transsexuals, but that the inmate did not qualify for hormone therapy because of the length of his term and the prison's inability to perform a sex change operation, the lack of a medical necessity for the hormone, and disruption to the all-male prison. (Texas Department of Criminal Justice, University of Texas and Texas Tech University)

U.S. District Court
ABORTION

Roe v. Crawford, 396 F.Supp.2d 1041 (W.D.Mo. 2005). A female inmate sued prison officials, requesting a preliminary injunction requiring them to transport her to a local health care provider for the purpose of providing medical services to terminate her pregnancy. The district court held that the inmate was entitled to injunctive relief and ordered accordingly. The court found that denying the inmate the right to choose to terminate her pregnancy constituted irreparable injury and that substantial delay in the decision to abort increased the risks associated with the procedure. According to the court, the prison policy not to transport female prisoners out of the institution for abortions that were not medically necessary was claimed to be reasonably related to the penological interests of security and cost, but the court found those interests were not legitimate penological interests. (Women's Diagnostic and Correctional Center, Missouri)

2006

U.S. District Court
SEARCHES

Beasley v. City of Sugar Land, 410 F.Supp.2d 524 (S.D.Tex. 2006). An arrestee sued a city under § 1983, claiming she was subjected to a strip search in violation of the Fourth Amendment. The city moved for summary judgment and the district court entered summary judgment for the city. The court held that the municipality's policy of authorizing strip searches only when an official had reasonable suspicion that an arrestee was a threat to facility security, did not violate the Fourth Amendment. The arrestee was cited for driving her mother's car with no driver's license, no current motor vehicle inspection or registration, no insurance, and no license plate light, a

few days after her eighteenth birthday. She was summoned to appear in court but mistakenly appeared five days late. She was arrested at her house on a warrant for failure to appear and she was allowed to put on shoes and socks, but was taken to jail in the clothes she was wearing—pajama pants and a cotton shirt with no bra. On the way to the city jail the arresting officer radioed for a female officer to meet him at the jail to perform a search. At the jail a female police officer told the arrestee to stand with her hands against a wall. She instructed the arrestee to lift her shirt and the officer lifted Beasley's breasts to feel beneath them. The officer then instructed the arrestee to drop her pants while continuing to hold up her shirt. The officer pulled the arrestee's panties taut and did a quick two-finger swipe across Beasley's vagina. The male arresting officer allegedly witnessed this search. The arrestee initially alleged that she was subjected to a "strip search and body cavity search," but the court found that her description of the events did not indicate that a body cavity search occurred. (City of Sugar Land, Texas)

U.S. Appeals Court
RESTRAINTS

Calvi v. Knox County, 470 F.3d 422 (1st Cir. 2006). A female arrestee brought a § 1983 action against a city, city officers, a county, and county officers alleging excessive force. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed. The court held that an officer who handcuffed the arrestee in the customary manner by cuffing her hands behind her back did not use excessive force, even if the officer knew that the arrestee had a hand deformity. The court noted that the officer's decision to not deviate from the standard practice of placing handcuffs behind the back was a judgment call. The arrestee had told the officer to be gentle because she was frail and had recently undergone elbow surgery. The officer double-locked the handcuffs behind her back so that they would not tighten. He then marched her outside, deposited her in his cruiser, and belted her in for transport to the jail. Upon arriving at the lockup, the arrestee was transferred to the custody of a jail officer, who unlocked the handcuffs, patted her down, and placed her in a holding cell. After other required aspects of the booking process had been completed, another jail officer fingerprinted the arrestee, who claimed that the officer who fingerprinted her repeatedly pushed her fingers down hard, in spite of being told that she had a hand deformity. She also claimed that the fingerprinting caused injuries to her wrist and her surgically repaired middle finger. (Knox County Jail, Maine)

U.S. District Court
MEDICAL CARE
PREGNANCY

Clifton v. Eubank, 418 F.Supp.2d 1243 (D.Colo. 2006). An inmate brought a § 1983 action alleging violations of the Eighth and Fourteenth Amendment against a prison nurse and corrections officers, arising out of the stillbirth of her fetus. The court denied the defendants' motion for summary judgment. The court held that the inmate's delayed labor, resulting in the stillbirth of an otherwise viable fetus, constituted a physical injury to the mother sufficient to satisfy the Prison Litigation Reform Act's (PLRA) physical injury requirement, and that PLRA did not bar her constitutional claims under the Eighth and Fourteenth Amendments. The inmate had told an officer that she was in labor and needed medical assistance but the officer sent her back to her housing unit. Later she told another officer that she was in labor and needed help but the officer declined to provide her with medical assistance and told her to return to her unit. Upon her third request for medical assistance, another officer sent her to the facility's medical unit where the nurse examined the inmate and found no evidence that her water had broken. During the examination the nurse did not use a fetal heart monitor to evaluate the status of the fetus, apparently because she did not know how to use the monitor. The inmate was sent back to her housing unit without treatment, even though she told the nurse that she had difficulties with prior deliveries. The next day, another officer noticed Clifton's distress and sent her to the medical unit. She was sent from the prison to a hospital, where it was determined that her fetus was dead. (Women's Corr'l Facility, Canon City, Colo.)

U.S. District Court
MEDICAL CARE

Forton v. County of Ogemaw, 435 F.Supp.2d 640 (E.D.Mich. 2006). The estate of a deceased jail inmate brought suit against a county and various employees, claiming deprivation of the inmate's Eighth Amendment right to medical care. The female inmate had been serving a sentence in the jail and died from a cancerous tumor that encircled her esophagus. The district court granted summary judgment in favor of the defendants. The court held that the inmate had an objectively serious medical condition, as required for an Eighth Amendment claim. The court found that the jail nurse supervising medical care of the inmate did not display deliberate indifference to the inmate's medical condition, in violation of Eighth Amendment, where the nurse twice had the inmate sent to a clinic for a physician's evaluation, provided the inmate with an inhaler and instructed the inmate in its use, had the inmate moved to an observation cell, and left orders that the inmate be transported to a medical facility if her condition worsened. The court found that a jail officer who was observing the inmate was not deliberately indifferent to the inmate's medical condition, where the officer had no knowledge of the inmate's condition, administered the inhalator dose, checked on the inmate frequently, and declined the inmate's request that she be taken to hospital, supported by another inmate, only because of the non-hospitalization order left by nurse. According to the court, the alleged failure of the jail administrator, who was not on duty on the day in question, to relay a friend's concern regarding the physical condition of inmate, left as telephone message, did not establish that the administrator was deliberately indifferent to the medical situation of inmate. The court also

found that correctional officers did not show deliberate indifference to the inmate, although the inmate was screaming while in an observation cell, wanting to return to her own cell, and not eating, because the officers observed her frequently and took her back to her cell at her request, where she instantly fell to the floor unconscious. (Ogemaw County Jail, Michigan)

U.S. District Court
SEARCHES

Gilanian v. City of Boston, 431 F.Supp.2d 172 (D.Mass. 2006). A detainee brought a civil rights action against a municipality, county, sheriff, and corrections officers alleging that strip searches violated her Fourth Amendment right to be free from unreasonable searches and seizures. The district court denied the detainee's motion, finding that fact issues as to whether the strip search of the detainee was justified and whether the search was conducted in a reasonable manner, precluded summary judgment. The case challenged two strip-searches of the detainee conducted while she was held in pretrial detention, and asserted claims against the City of Boston, Suffolk County, Suffolk County Sheriff Richard Rouse, and two unidentified Suffolk County corrections officers. The court suggested that the trial should focus primarily on the question of whether there was a less restrictive alternative. The court posed questions, including: could the policy change, from strip-searching to segregation, have been implemented at the time of the detainee's second strip-search; what changes, if any, in staffing, space allocation, and budget were necessary for the jail to switch to segregation after the *Roberts* decision; what less restrictive alternatives, other than segregation, might have been available to the Jail in March 2000; if the switch to segregation was possible in 2001, how far back in time is it proper to assume that the same switch could have been made? (Nashua Street Jail, Suffolk County, Massachusetts)

U.S. Appeals Court
HYGIENE
USE OF FORCE

Johnson v. Blaukat, 453 F.3d 1108 (8th Cir. 2006). A female inmate brought claims against correctional officers, supervisors, and a county alleging that her constitutional rights were violated by the alleged use of excessive force. The district court entered summary judgment on the claims and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that: (1) genuine issues of fact precluded summary judgment on the claim that officers used excessive force in violation of the Cruel and Unusual Punishment Clause; (2) the supervisor's actions in allegedly using a racial epithet against another inmate and in allegedly removing feminine hygiene products from the cell was not cruel and unusual punishment; and (3) the purported violation of county policies that were not alleged to be unconstitutional provided no basis for civil rights liability for the county. According to the court, genuine issues of material fact as to whether correctional officers used excessive force in tackling and using pepper spray on the inmate when they entered her cell to subdue a cellmate precluded summary judgment on the Eighth Amendment claim; questions included whether their acts were defensive in nature or motivated by frustration or anger, whether the force applied was necessary to maintain order and was commensurate with the situation, whether the inmate failed to comply with the officers' orders and was actively resisting them, whether a verbal warning was issued before the application of pepper spray, and whether the inmate suffered actual injuries. The court found that the correctional officers' alleged violation of county policies regarding the use of force and the use of pepper spray could not give rise to civil rights liability on the part of the county, absent any allegation the policies themselves were unconstitutional. The inmate had testified that her head was slammed down on the floor, her hair was pulled, and that an officer sprayed mace on her face and eyes. She claimed that she sustained injuries from the incident, including bruising and lacerations on her arms, a broken thumb, and two black eyes. The inmate admitted that after the incident an officer gave her a cold towel and she was taken to the shower. (Jasper County Detention Center)

U.S. District Court
DISCIPLINE

Keel v. Dovey, 459 F.Supp.2d 946 (C.D.Cal. 2006). A state inmate filed a § 1983 action alleging that prison officials violated her civil rights by placing her in administrative segregation pending the investigation of a disciplinary charge against her, and by conducting a disciplinary hearing that violated her procedural due process rights. Officials moved for summary judgment. The district court granted the motion. The court held that: (1) the inmate did not have a due process liberty interest in remaining free from administrative segregation prior to a disciplinary hearing; (2) the use of confidential information in a disciplinary hearing did not violate the inmate's right to procedural due process; and (3) the inmate was not denied due process as the result of the officials' refusal to permit her to listen to and read intercepted inmate phone calls. The court noted that the administrative segregation the inmate endured pending disciplinary investigation was not an atypical and significant hardship in relation to the ordinary incidents of prison life. According to the court, even if her cell was unsanitary, birds and mice were present in inmate cells, and she lost her prison job and her ability to participate in religious ceremonies, the inmate did not suffer forfeiture of time credits, she had non-contact visits of one hour in length, and there was no evidence regarding conditions of cells outside of administrative segregation. The court held that the use of confidential information did not violate the inmate's procedural due process rights, where officials stated that disclosure of the source's identity would endanger the source or the institution's security, more than one source independently provided the same information, the source incriminated herself in criminal activity when providing the information, and part of the information provided by the source had already proven to be true. (California Institution for Women, Chino)

U.S. District Court
SEXUAL ASSAULT

Newsome v. Lee County, Ala., 431 F.Supp.2d 1189 (M.D.Ala. 2006). A female county jail detainee who had been raped by three inmates, sued a county and employees, alleging violation of her federal and state rights. The district court dismissed the case in part, and denied dismissal in part. The court held that the officers were not entitled to qualified immunity on the claim that they retaliated against the detainee for her efforts to report the rape. The court found that the detainee stated a Fourteenth Amendment due process violation against the officer who placed the detainee in a cell with male inmates, but against no other jail personnel. The court also found valid claims of conspiracy, and conspiracy to block the opportunity to report the rape, under § 1983 on the part of officer who placed the detainee in the cell with the male inmates. After the incident, officers allegedly cut off the detainee's access to phones and visitors and threatened that there would be negative consequences if she persevered with her charges. (Lee County Jail, Alabama)

U.S. District Court
ABORTION

Roe v. Crawford, 439 F.Supp.2d 942 (W.D. Mo. 2006). An inmate brought a class action against corrections officials, challenging a policy prohibiting transportation of pregnant inmates off-site to provide abortion care for non-therapeutic abortions. The district court held that the policy violated inmates' Due Process rights and the policy violated the Eighth Amendment. The court noted that inmates who chose to terminate a pregnancy and had to be transported outside of the prison for that purpose posed no greater security risk than any other inmate requiring outside medical attention. The court held that a Missouri law prohibiting the use of State funds to assist with an abortion did not encompass transport to the location where the procedure was to take place, there was no alternative way for an inmate to obtain a non-therapeutic abortion, and abortion out counts had no measurable impact on the ongoing prison need to schedule and reschedule medical appointments. (Women's Eastern Reception, Diagnostic and Correctional Center, Missouri)

U.S. Appeals Court
SEARCHES

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

U.S. Appeals Court
MEDICAL CARE

Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006). The mother of a female detainee who died while in jail brought a § 1983 action, claiming that police officers violated the detainee's rights under the Eighth and Fourteenth Amendments. The district court granted judgment on the pleadings in favor of the officers. The mother appealed. The court of appeals affirmed, holding that the mother lacked standing. The detainee, the daughter of the plaintiff, had been brought to a jail and was being interrogated when she began talking unintelligibly and experiencing seizures. An officer said that she was "faking a seizure" to avoid jail time. She lost consciousness but officers did not request an ambulance for nearly an hour. She had ingested cocaine at the time of her arrest and died from cocaine intoxication. (Howard County Jail and City of Nashville, Arkansas)

2007

U.S. District Court
MEDICAL CARE

Anderson ex rel. Cain v. Perkins, 532 F.Supp.2d 837 (S.D.Miss. 2007). A daughter, as next friend of a jail detainee who suffered second-degree burns on her ankles, thighs, and buttocks while awaiting mental health commitment, brought a civil rights suit against a sheriff and a county. The sheriff moved for summary judgment on claims brought against him in his individual capacity. The district court granted the motion. The court held that the sheriff did not violate the detainee's right to be protected from harm, absent evidence showing that restraints were likely used to subdue her. The court found that the sheriff was not deliberately indifferent to the detainee's medical needs in failing to administer her anti-psychotic medications, where the detainee's refusal to take her medications prior to being taken into custody, coupled with her violent and psychotic behavior as the result of the refusal, was the basis for her commitment. The court found that the sheriff was not deliberately indifferent in failing to discover second-degree burns of an unknown origin on the detainee's ankles, thighs, and buttocks because jailers regularly observed the detainee through a viewing window in her cell door, but did not actually enter the cell to visually inspect the detainee for signs of injury. (Amite County Jail, Mississippi)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Davis v. U.S., 474 F.Supp.2d 829 (N.D.Tex. 2007). An inmate who was raped by a prison officer in a federal medical center brought a Federal Tort Claims Act action against the United States, alleging negligence on the part of other prison officers. The district court denied the defendants' motion for summary judgment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prison officers were working within the scope of their employment when they led the inmate to another officer who raped her, whether the officers violated a duty to protect the inmate from harm, and whether their violations proximately caused the inmate's injury. (Federal Medical Center-Carswell, Texas)

U.S. District Court
SUICIDE

Estate of Hill v. Richards, 525 F.Supp.2d 1076 (W.D.Wis. 2007). The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)

U.S. District Court
CLASSIFICATION
TRANSFER
MEDICAL CARE

Farmer v. Kavanagh, 494 F.Supp.2d 345 (D.Md. 2007). A state prison inmate sued officials, claiming her Fourteenth Amendment due process rights and her Eighth Amendment right to be free from cruel and unusual punishment were violated when she was transferred from a medium to a maximum security facility. The defendants moved for summary judgment. The district court entered judgment for the officials on the federal claims and dismissed the state law claim. The court held that the inmate had a liberty interest in not being sent to a maximum security prison, as required in order to bring a claim that transfer to maximum security facility without prior notice and an opportunity to be heard, was a violation of her Fourteenth Amendment rights. The court noted that the maximum security prison's strict control over every aspect of an inmate's life, and almost virtual isolation from any human contact, imposed conditions of confinement far worse than her previous situation in the general population of a medium security prison. But the court found that the officials had qualified immunity from the inmate's due process claim because, at the time of the transfer, it was not clearly established that an inmate could have a liberty interest in not being transferred to a maximum security prison.

The court held that the officials' alleged difference in access to health care providers, between the medium security prison and the maximum security prison to which the inmate was transferred, was insufficient to support a determination that prison officials showed deliberate indifference to her medical needs by transferring her. The court noted that the inmate's delivery of drugs required for AIDS treatment was delayed and intermittently interrupted, but the patient's file did not reflect the seriousness of her condition, and when one maximum security prison employee was found derelict in making deliveries of medications, the employee was fired. (Maryland Correctional Adjustment Center ["Supermax"])

U.S. Appeals Court
PREGNANCY
MEDICAL CARE

Goebert v. Lee County, 510 F.3d 1312 (11th Cir. 2007). A pretrial detainee in a county jail, who had been pregnant during her detention and whose child had been stillborn, brought a § 1983 action against county and jail officials, a physician, and the jail's medical services provider, alleging deliberate indifference to her serious medical needs. The district court granted summary judgment for all defendants based on failure to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the jail's administrative appeal procedure for inmates was not "available" within the meaning of PLRA, where the detainee had no way of knowing about it. According to the court, the detainee adequately exhausted her available remedies under PLRA by filing a document titled "request form." The court noted that the handbook given to inmates did not mention a grievance form, but only spoke of a "written request," and the inmate checked the "complaint" box on the request form rather than the "request" box and cogently described her grievance. The court found that the detainee's amniotic fluid leak constituted a serious medical need and the facility commander exceeded gross negligence in answering the detainee's complaint about lack of treatment, supporting a deliberate indifference claim. The commander apparently held a general disbelief of inmates' medical complaints, and responded only with a statement that the detainee could visit an outside physician if she could pay for it. (Lee County Jail, Florida)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 491 F.Supp.2d 544 (E.D.Va. 2007). An inmate brought an action against a correctional officer and regional jail authority, seeking to recover monetary relief for injuries suffered as a result of an allegedly nonconsensual sexual encounter between her and the officer. The jail authority moved for summary judgment. The district court granted the motion in part, and denied in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officer, whose duties required him to observe inmates in the shower, was acting within the scope of his employment when he allegedly sexually assaulted the inmate after he observed her showering and during a "cell search" thereafter. The court held that the inmate's deposition testimony that she was the victim of a sexual assault by the correctional officer was sufficient to preclude summary judgment in favor of the jail authority on her intentional infliction of emotional distress claim. The court found that absent evidence indicating that the correctional officer was known by anyone to have a propensity to commit sexual assault at the time he was hired, or evidence indicating that some testing would have revealed that the officer would pose a danger to inmates, the jail authority was not liable under Virginia law on the inmate's negligent hiring claim. The court also found that since the jail authority never received any complaints from inmates about the officer, and swiftly investigated the matter and took appropriate action upon learning that a sexual encounter had occurred, it was not liable for negligent retention. (Virginia Peninsula Regional Jail)

U.S. Appeals Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Kahle v. Leonard, 477 F.3d 544 (8th Cir. 2007). A female pretrial detainee sued a deputy sheriff under § 1983, alleging that the deputy was deliberately indifferent to a substantial risk that she would be sexually assaulted by a correctional officer. The district court denied the deputy's motion for summary judgment seeking qualified immunity. The deputy appealed and the appeals court affirmed. The court held that genuine issues of material fact existed as to whether a county jail official was aware of a substantial risk of serious harm from a male correctional officer's alleged action of going to a female inmate's cell three times after lockdown, and as to whether the official exhibited deliberate indifference to that risk, precluded summary judgment as to whether the official was liable under § 1983 for due process violations. The court found that, for purposes of qualified immunity, the law was clearly established at the time of the detainee's assault (December 2002) that it would violate a county jail inmate's due process rights for a jail official to exhibit deliberate indifference to a substantial risk that a correctional officer would sexually assault the inmate, and that a supervisor who was deliberately indifferent to a substantial risk of such assault could be held liable under § 1983. (Pennington County Jail, S.D.)

U.S. District Court
CONDITIONS
FAILURE TO PROTECT
MEDICAL CARE

Laube v. Allen, 506 F.Supp.2d 969 (M.D.Ala. 2007). A class action lawsuit was brought on behalf of women incarcerated by the Alabama Department of Corrections, who claimed that various state officials were deliberately indifferent to the denial of female prisoners' basic human needs, to the denial of their serious medical needs, and to their substantial risk of serious physical violence. The district court approved two four-year settlement agreements and the prisoners moved for attorneys' fees and expenses. The district court held that: (1) the prisoners were the "prevailing parties" for purposes of imposing attorneys' fees and expenses; (2) the number of hours billed

through the date of oral arguments on the motion for a preliminary injunction and the date on which the billing statement read “end of preliminary injunction time” would be cut in half across-the-board; (3) the time spent challenging the prison officials’ second remedial plan was non-compensable; (4) fees relating to discovery disputes between the prisoners and the non-state defendants were not compensable from the state defendants; (5) attorney fees that were directly and reasonably incurred in obtaining the court-ordered relief contained within medical-settlement agreement were compensable; (6) interest on attorney’s fees and expenses runs from the date of the judgment establishing plaintiffs’ entitlement to the award; and (7) the prisoners were entitled to compensable litigation expenses directly and reasonably related to their enforcement expenses. (Alabama Department of Corrections)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Meyer v. Nava, 518 F.Supp.2d 1279 (D.Kan. 2007). A former prisoner brought a § 1983 action against a former employee at a county jail, a board of county commissioners, and a county sheriff, seeking damages for injuries suffered after being raped by a former jail employee while incarcerated at the county jail. The defendants moved for summary judgment. The district court granted the motion. The court held that a former jail employee who raped the prisoner was not a final policymaker and therefore the county could not be held liable under § 1983. The court noted that even though the employee had some discretion to place the prisoner in a particular area of the jail, he had no authority to make or change county policy, and all authority to establish policy otherwise remained with the sheriff. The court held that evidence was insufficient to show that the county sheriff possessed knowledge of an excessive risk to female inmates and that the sheriff was deliberately indifferent toward such a known risk, as would have subjected the sheriff to § 1983 liability for an Eighth Amendment violation of the former prisoner’s right to be free from cruel and unusual punishment. According to the court, the employee’s consensual actions with another female inmate, the actions of another male jailer with a female inmate, and the employee’s telephone calls to an inmate after her release did not constitute evidence demonstrative of the sheriff’s knowledge of any violation of department policy or a substantial risk of serious harm to female inmates. The court held that the county board lacked any authority to supervise or discipline the county sheriff or his subordinates, as required to subject it to § 1983 liability. The court found that the former county jail employee’s actions in sexually assaulting the former prisoner were not within the scope of his employment, and thus the county and sheriff were not subject to liability for the actions under the Kansas Tort Claims Act (KTCA). According to the court, the employee was acting for his personal benefit and not in furtherance of any business of the county, there was no express or implied authority to perform the acts in which he engaged, and the acts were not foreseeable in the furtherance of his duties. (Lyon County Jail, Kansas)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Mombourquette ex rel. Mombourquette v. Amundson, 469 F.Supp.2d 624 (W.D.Wis. 2007). A pretrial detainee in a county jail who was left seriously brain damaged after she attempted suicide by hanging in her cell, brought a civil rights suit against a county sheriff, correctional officers, and jail nurses, alleging that they violated her constitutional rights by failing to protect her from harming herself. The defendants filed motions for summary judgment. The district court denied the motions. The court held that evidence that the pretrial detainee reported to county jail personnel that a jail lieutenant was taking another female inmate out of her cell at night to engage in sexual activity was admissible, because such evidence showed that the lieutenant had a strong motive to withhold protection from the detainee, and thus was relevant to show he intentionally disregarded a risk to the detainee’s safety. The court also found that evidence that county sheriff refused to investigate allegations that the county jail lieutenant was engaging in sexual misconduct with another inmate was relevant and admissible, where the sheriff’s dismissive attitude of the complaint exhibited deliberate indifference, both toward the detainee’s health and safety in particular and generally toward the health and safety of all inmates. The court denied summary judgment because it found a genuine issue of material fact as to whether a nurse and correctional officers at the county jail were deliberately indifferent to pretrial detainee’s health and safety. The court also found a genuine issue of material fact as to whether there was an affirmative link between the county sheriff’s failure to properly train and supervise county jail personnel and the failure to prevent the detainee’s suicide. (Monroe County Jail, Wisconsin)

U.S. District Court
SEXUAL ASSAULT
FAILURE TO PROTECT

Nillson-Borrill v. Burnheimer, 505 F.Supp.2d 180 (D.Me. 2007). A female former inmate who was allegedly raped by a male inmate while she was incarcerated brought a civil rights action against a prison superintendent. The superintendent moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the Maine Civil Rights Act permits a deliberate indifference claim against a corrections superintendent, based solely upon violence that a prisoner suffered at the hands of a fellow inmate, and claims against officers in their official capacities were barred by the Eleventh Amendment. (Maine Correctional Center)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE
RESTRAINTS

Norris v. Engles, 494 F.3d 634 (8th Cir. 2007). A county jail detainee, who had been diagnosed with manic bipolar depression, sued a jail official under § 1983, alleging due process violations arising from his physical restraint. The district court denied the official’s motion for summary judgment based upon qualified immunity. The official appealed. The appeals court reversed and remanded, finding that the official’s alleged conduct of cuffing the detainee to a floor-grate toilet in an uncomfortable manner for approximately three hours, if proven, did not violate the detainee’s substantive due process rights. According to the court, the official’s alleged actions did not shock the conscience and thus did not violate the detainee’s substantive due process rights, inasmuch as official took such action after the detainee, who had been diagnosed with manic bipolar depression, had threatened to pull out her own peripherally inserted central catheter (PICC) so that she would bleed to death, and after the detainee had shown that having her hands handcuffed behind her back was alone not an adequate form of restraint. (Independence County Jail, Arkansas)

U.S. District Court
CONDITIONS
DISCRIMINATION
EQUAL PROTECTION
PROGRAMMING

Roubideaux v. North Dakota Dept. of Corrections and Rehabilitation, 523 F.Supp.2d 952 (D.N.D. 2007). Former and present female inmates of the North Dakota Department of Corrections and Rehabilitation filed suit alleging that the department violated their equal protection rights and Title IX of the Federal Educational Amendments Act by discrimination on the basis of sex. The female inmates alleged that the state provided female inmates, in comparison with their male counterparts, with unequal and inferior housing, facilities, classification systems, orientation programs, educational programs, vocational programs, work opportunities, and substance abuse treatment opportunities. The district court granted the defendants' motion to dismiss. The court held that the female inmates' placement at a women's correction and rehabilitation center, a contract facility to house female inmates, was not based on a discriminatory statutory scheme. The court found that the prison industry programs offered at the center were not "education programs or activities" as defined by Title IX. According to the court, the vocational training offered at the center was not discriminatorily inferior to those offered to male inmates at state facilities. The court noted that the availability and access to the restaurant management, heating and air conditioning, auto technician, welding, carpentry, and food service programs is based on the location of inmates, not on their gender. (Southwest Multi-County Corr. Center, North Dakota)

2008

U.S. District Court
MEDICAL CARE

Anglin v. City of Aspen, Colo., 552 F.Supp.2d 1205 (D.Colo. 2008). A pretrial detainee brought a civil rights action, alleging that a county sheriff, county jailers, and others violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while in custody at a county jail. The district court granted summary judgment for the defendants in part. The court held that a county sheriff's deputy personally participated in the decision to sedate the detainee and therefore the deputy could be liable in his individual capacity under § 1983. The deputy had called paramedics and admittedly lobbied the medics to sedate the detainee, he allegedly falsely reported to the paramedics that the detainee had been banging her head and throwing herself against her steel cell door, and he participated in physically restraining the detainee during the injection, at the request of the paramedics. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the deputy falsely reported to the paramedics. The court found that the deputy was not entitled to qualified immunity from liability. The court found that the training of county jail personnel by the county sheriff and other officials with respect to forcible sedation of pretrial detainees in the county jail, was not deliberately indifferent to the due process rights of the detainees, and therefore the sheriff and county officials were not liable under § 1983 for failure to properly train. The training required personnel to call the paramedics and let the paramedics, with the advice of a physician, make the decision as to whether or not to sedate. (Pitkin County Jail, Colorado)

U.S. District Court
MEDICAL CARE

Anglin v. City of Aspen, Colo., 552 F.Supp.2d 1229 (D.Colo. 2008). A jail inmate brought a civil rights action, alleging that an emergency room physician violated her constitutional rights by forcibly injecting her with antipsychotic medication while she was in custody. The physician filed a motion for summary judgment, which was granted by the district court. The court held that the physician "acted under color of state law" within the meaning of § 1983 when he ordered the inmate to be involuntarily sedated, and that the physician exercised reasonable medical judgment in deciding to forcibly sedate the inmate. The court noted that although the private physician did not contract directly with the state to treat the inmate, the physician however undertook a public function because the provision of medical services to inmates was traditionally the exclusive prerogative of the state. The inmate appeared highly intoxicated and out of control, was pounding and throwing her body against her cell door, was violently pulling against her restraints and thrashing about, and was unable to gain control in the presence of the paramedics or to allow her vital signs to be taken. (Pitkin County Jail, Colorado)

U.S. District Court
MEDICAL CARE

Anglin v. City of Aspen, 562 F.Supp.2d 1304 (D.Colo. 2008). A jail inmate brought a civil rights action under § 1983 against a city, former and current police officers, and a police chief, alleging that the defendants violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while she was in custody at a county jail. The district court granted summary judgment for the defendants. The court held that officers did not deprive the inmate of due process by restraining her while paramedics forcibly sedated her and that the officers' act of restraining the inmate while she was sedated did not amount to excessive use of force. The court found that the police chief was not liable for failure to train and/or supervise officers, where the training reflected the sound conclusion that medical professionals, rather than law enforcement personnel, were the individuals most qualified to determine whether sedation was appropriate. According to the court, absent a policy of sedating detainees, the city was not municipally liable under § 1983. The court held that the officers' act of restraining the inmate while paramedics forcibly administered antipsychotic medication to her was not substantially motivated as a response to her exercise of allegedly constitutionally protected conduct, as would support the inmate's First Amendment free speech retaliation claim against the officers, where the physician, not the officers, had legal authorization to decide whether an emergency existed that justified the inmate's forced sedation, and the officers did not participate in making the decision to forcibly sedate the inmate. (City of Aspen, Colorado)

U.S. Appeals Court
SEARCHES
SEXUAL HARASSMENT

Archuleta v. Wagner, 523 F.3d 1278 (10th Cir. 2008). An arrestee brought a § 1983 action against a jailer and others alleging her Fourth and Fourteenth Amendment rights were violated when she was strip searched. The district court denied the jailer's request for qualified immunity and the jailer appealed. The appeals court affirmed the district court decision. The court held that the jailer was not justified in conducting the strip search during booking, following the arrest pursuant to an arrest warrant for harassment, where the arrestee never intermingled with the general jail population but rather was confined in a cell by herself for several hours while awaiting bail. The court noted that three pat down searches had been performed on the arrestee prior to booking, the arrestee was wearing shorts and a sleeveless blouse at the time of booking, the jailer saw that the

arrestee did not have any tattoos or moles indicating that she was the culprit, and the crime of harassment was not a crime of violence. The court found that the arrestee had a right not to be strip searched during booking when she was not going to intermingle with the general prison population. She had already been through a pat-down search, and there was no reasonable suspicion that she had a weapon. According to the court, the jailer who conducted the strip search was not entitled to qualified immunity because at the time of this incident it was clearly established that a strip search could be justified if there was a reasonable suspicion that the detainee possessed weapons and the detainee intermingled with the general jail population.

The 46-year-old mother of nine had been riding in a family van with some of her children when she was stopped by an officer because there was an extra child in the back seat. The officer arrested her with the belief that she was the person for whom a warrant had been issued. After being booked at the jail it became apparent that she was not the person named in the warrant because she did not have the tattoos and moles that were described in the file. Knowing that the plaintiff was not the person named in the warrant, a jail officer nonetheless continued to process and strip search her. As she was standing naked, she began to lactate. She tried to cover herself but was told by the officer to put her arms down. She was mocked continually by the officer and a male officer during this incident. (Jefferson County Detention Facility, Colorado)

U.S. District Court
SEARCHES

Brazier v. Oxford County, 575 F.Supp.2d 265 (D.Me. 2008). An arrestee brought a § 1983 action against a county and corrections officers, alleging that strip searches performed upon her during two post-arrest confinements at a county jail, both relating to her driving privileges, were unconstitutional. The district court held that the strip searches violated the county's written policy, and thus the county was subject to liability under § 1983. The court noted that the county's written policy prohibited strip searches of inmates charged with misdemeanor crimes unless there was reasonable suspicion to believe that an inmate was hoarding evidence to a crime, weapons, drugs, or contraband. (Oxford County Jail, Maine)

U.S. Appeals Court
CHILDREN

Carrascosa v. McGuire, 520 F.3d 249 (3rd Cir. 2008). A detainee sought a writ of habeas corpus seeking to end her detention in jail for violating a state court civil contempt order that directed her to return her child to the father's custody in the United States pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The district court denied her motion for reconsideration and the detainee appealed. The appeals court affirmed, finding that the detainee's incarceration was not in violation of laws or treaties of the United States, as required for a grant of habeas petition. The court noted that a Spanish court awarded custody of the child to the detainee, who had removed the child from her habitual place of residence in New Jersey without the American father's permission, in direct contravention of both the letter and spirit of the Hague Convention. The court noted that this also violated the principles of international comity by applying Spanish law, rather than New Jersey law, and therefore warranted refusal to afford comity to the decisions of Spanish courts. (Bergen County Jail, New Jersey)

U.S. District Court
PRIVACY
SEARCHES

Collins v. Knox County, 569 F.Supp.2d 269 (D.Me. 2008). A female arrestee brought a § 1983 action against a county, sheriff, and corrections officers, alleging an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the jail. The district court granted summary judgment for the defendants. The court held that the county did not have an unconstitutional strip search policy or custom at the county jail, and that the sheriff did not acquiesce to a policy or practice of unconstitutional strip searches. The court found that there was no evidence of an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the county jail, as required for the arrestee to establish a § 1983 claim against the county. The court noted that its prior determination in an unrelated case, that the county maintained an unconstitutional policy of strip searching all misdemeanor detainees, concerned a period several years prior to the time that the arrestee was detained. The court found that the strip search of the female arrestee upon her admission to jail after self-surrendering on an outstanding felony arrest warrant was reasonable under the Fourth Amendment. The search, in which the arrestee was required to run her fingers through her hair, extend her arms out straight, open her mouth for visual inspection, spread her toes, lift each of her breasts, expose her vagina, squat on her haunches with her back to the officer and, while squatting, cough violently several times, at which time she expelled menstrual fluid, caused the arrestee humiliation and embarrassment. The court found that the search was based on a drug charge in her inmate file, the fact that she made a planned admission to jail which provided the opportunity to conceal contraband, and that she was going to be housed overnight at the jail, which had a problem with contraband. The search was performed by a female officer in the changing area of the shower stall adjacent to the booking area, which was mostly shielded from view by a plastic curtain. (Knox County Jail, Maine)

U.S. District Court
MEDICAL CARE

Costa v. County of Burlington, 584 F.Supp.2d 681 (D.N.J. 2008). An administrator, individually and as the representative of a deceased pretrial detainee's estate, brought civil rights and state law claims against a county and the warden of a county jail, alleging that the inmate contracted Methicillin-resistant *Staphylococcus aureus* (MRSA) during her incarceration and ultimately died as result of MRSA-related pneumonia. The administrator appealed the pretrial rulings of a United States Magistrate. The district court denied the appeal in part and dismissed in part. The court held that broadening the scope of discovery of documents concerning other inmates' medical treatment beyond grievances related to Methicillin-resistant *Staphylococcus aureus* (MRSA) would have been too intrusive and minimally probative. (Burlington County Corrections and Work Release Center, New Jersey)

U.S. Appeals Court
MEDICAL CARE

Ford v. County of Grand Traverse, 535 F.3d 483 (6th Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found

against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk. According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her \$214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. District Court
MEDICAL CARE
PRIVACY
SUICIDE

Graham v. Van Dycke, 564 F.Supp.2d 1305 (D.Kan. 2008). An inmate brought a § 1983 action against medical providers working at a state correctional facility, alleging violations of her Eighth Amendment due process rights arising from a strip search conducted by a male officer. She also challenged her mental health confinement. The district court granted summary judgment for the medical providers. The court held that the prison doctor's decision to remove the inmate from her cell after she became agitated and demanded two psychotropic drugs and to place her in mental health segregation was not deliberate indifference. The court found that removal of the female inmate from her cell into administrative segregation and removal of her clothing, after she became agitated and demanded psychotropic drugs, did not violate her privacy or Eighth Amendment due process rights, even though officers who performed such tasks were all male. According to the court, the inmate was on suicide watch, which required removal of clothing to avoid self-injury, removal was done pursuant to established procedure and was videotaped, and a staffing shortage rendered it impractical to include a female officer on the removal team. (Topeka Correctional Facility, Kansas)

U.S. Appeals Court
SEARCHES

Hartline v. Gallo, 546 F.3d 95 (2nd Cir. 2008). An arrestee brought § 1983 and 1985 claims against a police department and others alleging her Fourth Amendment rights were violated when she was subjected to a strip search. The district court granted summary judgment in favor of the defendants and the arrestee appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no reasonable suspicion that the arrestee was hiding drugs on her person as required to justify the strip search and the officers were not entitled to qualified immunity. The court found that summary judgment was precluded by an issue of material fact regarding whether the jail's surveillance system telecast the strip search. (Southampton Police Department, New York)

U.S. District Court
MEDICAL CARE

Illina v. Zickefoose, 591 F.Supp.2d 145 (D.Conn. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, alleging that she was denied necessary medical care in violation of her Eighth Amendment rights. The district court held that the claim was cognizable as a habeas petition. According to the court, the claim asserted by the prisoner who had been diagnosed with cervical cancer, that she was denied necessary medical care in federal prison in violation of her Eighth Amendment right to be free from cruel and unusual punishment, and seeking restoration of certain medical treatment, specifically hormone medication, was cognizable as a habeas petition challenging her conditions of confinement pursuant. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
EQUAL PROTECTION
SEARCHES

Johnson v. Government of District of Columbia, 584 F.Supp.2d 83 (D.D.C. 2008). Female former arrestees filed a class action against the District of Columbia and a former United States Marshal for the Superior Court of District of Columbia, under § 1983, claiming violation of the Fourth and Fifth Amendments. The arrestees alleged that the marshal strip searched all females awaiting presentment to a superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees. The District of Columbia moved for summary judgment and the district court granted the motion. The court held that the former United States Marshal for the Superior Court of the District of Columbia was a federal official who was not amenable to suit, under § 1983, as an employee, servant, agent, or actor under the control of the District of Columbia, precluding the female former arrestees' class action. The court noted that the marshal was empowered to act under the color of the federal Anti-Drug Abuse Act, and a District of Columbia law provided that the marshal acted under the supervision of the United States Attorney General. According to the court, the District of Columbia lacked authority to control the conduct of the former United States Marshal, precluding the female former arrestees' class action under § 1983. The arrestees were held for presentment for an offense that did not involve drugs or violence, but they were subjected to a blanket policy of a strip, visual body cavity search and/or squat search without any individualized finding of reasonable suspicion or probable cause that they were concealing drugs, weapons or other contraband. (District of Columbia, Superior Court Cellblock)

U.S. Appeals Court
MEDICAL CARE

Jones v. Minnesota Dept. of Corrections, 512 F.3d 478 (8th Cir. 2008). The trustee for the heirs of an inmate brought an action against a state Department of Corrections, corrections officers and prison nurse alleging deliberate indifference to the inmate's serious medical need in violation of Eighth Amendment. The district court granted summary judgment in favor of the defendants and the trustee appealed. The appeals court affirmed. The court held that the inmate did not have a medical need so obvious that a layperson would easily recognize the need for a doctor's immediate attention, as required to establish an objectively serious medical need without a physician's diagnosis. The court found that corrections officers and a prison nurse did not violate the Eighth Amendment prohibition against cruel and unusual punishment by deliberate indifference to

the inmate's serious medical need. The court noted that although the inmate appeared to be unable to stand or walk under her own power, did not respond to officers' directions, rolled on the ground grunting and groaning and had dried blood and cuts on her lips, prison personnel had no background knowledge that made it obvious that those symptoms required medical attention and the inmate never expressed a need for medical attention. (Blue Earth County Jail and Minnesota Correctional Facility- Shakopee)

U.S. District Court
EQUAL PROTECTION
SEARCHES

Jones v. Murphy, 567 F.Supp.2d 787 (D.Md. 2008). A male arrestee brought a class action, alleging that a booking facility's policy of frisking female arrestees while searching male arrestees down to their underwear violated the equal protection clause of the Fourteenth Amendment. The district court granted summary judgment for the arrestee, finding that the booking facility's gender-differentiated search policy was not reasonably related to a legitimate penological interest in preventing arrestees from bringing weapons into the booking facility, and thus violated the equal protection clause of the Fourteenth Amendment. The court noted that the additional staff needed to more thoroughly search female arrestees was not overly burdensome, and searching all arrestees to their last layer of clothing was a readily available constitutional alternative. (Baltimore City Central Booking, Maryland)

U.S. District Court
MEDICAL CARE

Jones v. Oakland County, 585 F.Supp.2d 914 (E.D.Mich. 2008). The personal representative of an arrestee's estate brought an action against a county and two employees of the jail where the arrestee died of heart failure. The arrestee had been brought to the jail on a bench warrant for failing to appear at a court proceeding. Two days after her admission she was found unresponsive in her cell and could not be revived. It was subsequently determined that she died of heart failure (ischemic cardiomyopathy). The defendants moved for summary judgment and the district court granted the motion. The court held that neither a jail interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, nor a jail nurse, who first came into contact with the arrestee when she was summoned to assist in CPR and other efforts to revive the arrestee after she was found unresponsive in her jail cell, were deliberately indifferent to the arrestee's serious medical needs. According to the court, neither employee perceived a substantial risk to the arrestee's health and well-being and yet disregarded that risk, and any purported negligence in the interviewer's assessment of the arrestee's medical needs did not rise to the level of deliberate indifference. The court held that the conduct of the interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, did not amount to "gross negligence" within the meaning of Michigan's governmental immunity statute, and therefore she was not liable for failing to secure immediate medical treatment for a condition that shortly would result in the arrestee's death. (Oakland County Jail, Michigan)

U.S. District Court
SEARCHES

Munyer v. Haduch, 585 F.Supp.2d 670 (D.Md. 2008). A motorist who was arrested for driving around a police roadblock and subsequently failing to stop when signaled by a pursuing squad car brought a civil rights action against an arresting officer, police commissioner and warden at central booking facility to which she was transported. She alleged she was subjected to unlawful strip and visual body cavity searches. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations in the motorist's complaint were sufficient to state a supervisory liability claim against the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and the warden at a central booking facility, for intrusive searches to which she was subjected. The court found that the allegations in the offender's complaint-- that she was improperly subjected to a strip search and to a visual body cavity search as the result of a policy implemented by the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and by a warden at the central booking facility-- adequately pleaded the minimum facts necessary to state a supervisory liability claim against the Secretary and the warden under § 1983. The policy allegedly authorized strip searches and visual body cavity searches of all persons admitted to the facility, regardless of the charges filed against them or circumstances surrounding their arrest. (Baltimore Central Booking and Intake Facility, Maryland)

U.S. Appeals Court
FAILURE TO PROTECT

Orem v. Rephann, 523 F.3d 442 (4th Cir. 2008). An arrestee brought a § 1983 action against a sheriff's deputy, alleging use of excessive force during transport to jail. The district court denied the deputy's motion for summary judgment on qualified immunity grounds. The appeals court affirmed. The court held that the deputy's repeated use of a taser on the unruly arrestee qualified as wanton and sadistic and was not objectively reasonable, precluding qualified immunity. The court noted that the excessive force claim asserted by the arrestee, who had not been formally charged but was being transported to a jail at the time of the events giving rise to the claim, was analyzed under the Fourteenth Amendment's Due Process Clause, not under the Fourth Amendment. According to the court, the deputy first tased the arrestee after she forcefully stated "fuck you" to the deputy, the deputy did not follow the sheriff's department's taser policy requiring initial use of open-hand measures, the arrestee likely was not endangering herself as the deputy had claimed, since she was handcuffed and in a hobbling device while locked in the back-seat cage of the squad car, and the deputy used the taser under the arrestee's breast and on her inner thigh. (Eastern Regional Jail, West Virginia)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT
SEXUAL HARASSMENT

Ortiz v. Lasker, 590 F.Supp.2d 423 (W.D.N.Y. 2008). A female inmate brought a § 1983 action alleging that a male corrections officer physically and sexually assaulted her. The inmate moved for a default judgment and the district court granted the motion in part. The court held that the inmate was entitled to a default judgment on her claims of unconstitutional denial of liberty, use of excessive force, assault and battery, and sexual assault against the male corrections officer following the officer's failure to respond to the allegations asserted in the complaint. The inmate alleged that the officer twice cornered her in a locked, isolated classroom, and subjected her to verbal and physical abuse, including but not limited to forcible rape. The court held that the inmate failed to allege intent or disregard of a substantial probability to cause severe emotional distress, as required to state a claim against the male corrections officer for intentional infliction of emotional distress under New York law. (Albion Correctional Facility, New York)

U.S. District Court
FAILURE TO PROTECT

Parker v. Bladen County, 583 F.Supp.2d 736 (E.D.N.C. 2008). The administratrix of a detainee's estate brought a § 1983 action in state court against county defendants, alleging that they used excessive force when they used tasers on her. The defendants removed the action to federal court. The county and sheriff's department moved to dismiss. The district court granted the motion. According to the court, under North Carolina law, the sheriff, not the county encompassing his jurisdiction, has final policymaking authority over hiring, supervising, and discharging personnel in the sheriff's office. The court found that the sheriff's deputies' alleged use of excessive force in attempting to control the detainee by use of tasers, and the sheriff's department's alleged failure to train and supervise its employees as to the use of tasers, could not be attributed to the county, so as to subject it to § 1983 liability for the detainee's death. The court held that the county sheriff's department lacked the legal capacity, under North Carolina law, to be sued under § 1983 liability for the detainee's death. (Bladen County Sheriff's Department, North Carolina)

U.S. Appeals Court
MEDICAL CARE

Phillips v. Roane County, Tenn., 534 F.3d 531 (6th Cir. 2008). A representative of the estate of a pretrial detainee who died in a county jail of untreated diabetes brought an action against correctional officers, a jail doctor, and paramedics, alleging deliberate indifference to the detainee's serious medical condition under § 1983 and asserting state law medical malpractice claims. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that the detainee had a sufficiently serious medical condition, as required to prevail in a § 1983 deliberate indifference claim against jail officers and others, under the Due Process Clause. The court noted that at one point the detainee was found unconscious in her cell without a pulse, and for approximately two weeks after that incident, the detainee complained to officers and a doctor about chest pains, numbness, dizziness, vomiting, nausea, constipation, and a possible kidney infection.

The court held that the alleged conduct of the correctional officers in observing and being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, and in allegedly disregarding jail protocols, which required the officers to transport the detainee to a hospital emergency room for evaluation upon complaints of chest pain, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights.

The court found that the paramedic's conduct in allegedly disregarding a jail protocol which required the paramedic to transport detainees to a hospital emergency room when they complained of chest pains, by failing to transport the detainee upon responding to an incident in which the detainee allegedly lost consciousness, had no pulse, and complained of chest pain and nausea after she regained consciousness, amounted to deliberate indifference to the detainee's serious medical condition, in violation of her due process rights. The court found that county officials were not liable under § 1983 for their alleged failure to properly train jail officers as to the proper protocols for obtaining medical treatment for the detainee, absent a showing that any individual official encouraged, authorized, or knowingly acquiesced to the officers' alleged deliberate indifference.

The court found that the alleged conduct of a county jail doctor in being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, but failing to conduct more than a cursory examination, and in allegedly disregarding jail protocols, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. Because the detainee had a clearly established right under the Due Process Clause of the Fourteenth Amendment to receive medical treatment to address serious medical needs, the court found that jail officials were not entitled to qualified immunity for their alleged conduct in failing to provide the diabetic detainee with medical treatment. (Roane County Jail, Tennessee)

U.S. Appeals Court
MEDICAL CARE

Popoalii v. Correctional Medical Services, 512 F.3d 488 (8th Cir. 2008). A state prisoner brought a § 1983 action against multiple staff members of the state department of corrections (DOC) alleging deliberate indifference to her serious medical conditions. The district court struck the prisoner's expert affidavit and granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that DOC staff members were not deliberately indifferent to the prisoner's serious medical condition of cryptococcal meningitis, which resulted in her eventual blindness, as required to prevail in a § 1983 Eighth Amendment claim. According to the court, the prisoner had none of the normal signs or risk factors of cryptococcal meningitis. The court noted that although the staff probably should have been more vigilant in obtaining the prisoner's medical records, which would have disclosed her condition, there was no showing that they knew of the prisoner's condition. (Women's Eastern Reception Diagnostic and Corr. Center, Missouri)

U.S. Appeals Court
ABORTION

Roe v. Crawford, 514 F.3d 789 (8th Cir. 2008). An inmate brought a class action against corrections officials challenging the Missouri Department of Corrections (MDC) policy prohibiting transportation of pregnant inmates off-site for elective, non-therapeutic abortions. The district court determined that the MDC policy was unconstitutional and entered judgment for the inmate. Corrections officials appealed. The appeals court affirmed. The court held that the MDC policy could not withstand scrutiny under *Turner*. The court noted that even if the MDC policy rationally advanced the prison's legitimate security interests, the policy acted as a complete bar to elective abortions. The prison policy allowed transportation "outcounts" to outside facilities only for medically necessary therapeutic abortions due to a threat to the mother's life or health. According to the court, obtaining an abortion prior to incarceration was not a valid alternative means of exercising the right. According to the court, the MDC policy did not reduce the overall number of outcounts and so did not reduce any strain on financial or staff resources, and ready alternatives to the MDC policy existed including reverting to the previous policy of allowing outcounts for elective abortions. (Missouri Department of Corrections, Women's Eastern Reception, Diagnostic and Correctional Center)

U.S. Appeals Court
SEXUAL ASSAULT

Tafoya v. Salazar, 516 F.3d 912 (10th Cir. 2008). A female inmate who was sexually assaulted by a detention officer brought an action against an officer and a sheriff under § 1983 and state law. The district court granted summary judgment to the sheriff and the inmate appealed. The appeals court affirmed in part, reversed in part

and remanded. The court held that summary judgment was precluded by an issue of material fact as to whether the sheriff was deliberately indifferent to a substantial risk of serious harm to inmates that continued to exist at the jail, notwithstanding the measures he had implemented to remedy the circumstances in the jail that had directly led to sexual assaults of inmates by detention officers. Prior to this case, two independent incidents of sexual assault occurred in the jail, both perpetrated by male detention officers against female inmates. The appeals court had previously found evidence that these assaults were the product of unconstitutional jail conditions maintained through the deliberate indifference of the sheriff. The court noted many ways in which his administration of the jail fell below an acceptable standard. Three years after these assaults the plaintiff in this case was sexually assaulted by a detention officer who was later arrested for and convicted of the assaults. (Huerfano County Jail, Colorado)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 567 F.Supp.2d 201 (D.Me. 2008). An arrestee who was subjected to a strip and visual body cavity search brought a § 1983 action against a county for alleged violations of her Fourth Amendment rights. She brought the action after opting out of a class action against the county in which her claim had initially moved forward and in which she was named as class representative. The county asserted counterclaims for breach of contract and equitable estoppel and the parties cross-moved for summary judgment. The district court held that the settlement agreement in a prior class action did not contain an implied term that the arrestee, as named class representative, would not opt out of the agreement. (Knox County Jail, Maine)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 573 F.Supp.2d 301 (D.Me. 2008). An arrestee brought a § 1983 action against a county alleging a strip and visual body cavity search violated the Fourth Amendment. The district court granted summary judgment for the plaintiff, in part. The court held that jail personnel did not have individualized reasonable suspicion that the arrestee was concealing contraband or weapons, as required to perform a strip and visual body cavity search of the arrestee who had been arrested for felony witness tampering. The court noted that the arrestee was not arrested for a violent felony, spending a night in jail did not implicate sufficiently serious security concerns to warrant a search, the county failed to show the underlying facts of the crime provided individualized reasonable suspicion, and the county failed to establish that the arrestee's conduct required the search. According to the court, a felony categorization alone does not obviate the requirement of individualized reasonable suspicion for a strip and visual body cavity search of an arrestee. (Knox County Jail, Maine)

U.S. Appeals Court
SEXUAL ASSAULT
SEXUAL HARASSMENT

U.S. v. Moore, 525 F.3d 1033 (11th Cir. 2008). Two male correctional officers at a federal correctional institution were charged with a variety of misconduct arising from their inappropriate sexual contact with female inmates and their distribution of contraband to inmates. Both defendants were found guilty of conspiracy to accept an illegal gratuity. One was also found guilty of witness tampering and the other of bribery. The district court sentenced the defendants to twelve months of incarceration, followed by a three-year term of supervised release, and ordered them to pay a fine. The defendants appealed. The appeals court affirmed. The court held that there was sufficient evidence that the officers' conduct constituted an "official act" to support their conviction for conspiracy to accept an illegal gratuity. According to the appeals court, the district court did not commit a plain error by instructing the jury that sex was a "thing of value" under the bribery statute. The court also held that there was sufficient evidence to uphold the officer's witness tampering conviction. The court noted that the government offered evidence of five instances which satisfied the official act requirement, where officers switched unit assignments, one officer permitted an inmate to telephone another officer to request contraband, one officer telephoned another officer on an inmate's behalf, one officer permitted an inmate to leave her unit to meet with another officer, and one officer gave another officer the key to staff offices to meet with an inmate in the middle of the night. The district court had instructed the jury that "contraband" was defined as "anything whatsoever not approved by the warden", despite the defendant's claim that a broad federal regulatory definition of "contraband" should have been used. (Federal Correctional Institute in Tallahassee, Florida)

U.S. District Court
FAILURE TO PROTECT
RESTRAINTS

Zabala-Calderon v. U.S., 616 F.Supp.2d 195 (D.Puerto Rico 2008). A female detainee filed suit, under the Federal Tort Claims Act (FTCA), seeking injunctive relief and damages from the United States for injuries she allegedly suffered from falling to the ground when exiting the bus managed by the United States Marshal Service (USMS) during her transport from a detention center to a federal courthouse while she was fully restrained with handcuffs, a belly chain, and shackles. The district court denied the government's motion for summary judgment, finding that fact issues precluded summary judgment as to whether the detainee's injuries were caused by the government's negligence. The court found genuine issues of material fact remained as to whether the government failed to follow a standard of care and skill in transporting the female detainee by placing shackles on her that were allegedly too short for her to step down from a bus managed by the United States Marshal Service (USMS) and by allegedly failing to assist her as she stepped down from bus, resulting in the detainee's falling to the ground and sustaining injuries. (Metropolitan Detention Center, Puerto Rico)

2009

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Boyd v. Nichols, 616 F.Supp.2d 1331 (M.D.Ga. 2009). A female, who had been housed in a jail for violation of her probation, brought an action against a former jailer, county, and former sheriff, under § 1983 and state law, relating to the sexual assault of the inmate by the jailer. The county and sheriff moved for summary judgment and the district court granted the motions. The court held that the sheriff was not "deliberately indifferent" to a substantial risk of serious harm to the inmate under the Eighth Amendment or the Georgia constitution in failing to protect the inmate from sexual assaults by a jailer, absent evidence that the sheriff had knowledge or indication that the jailer was a threat or danger to inmates, or that male guards, if left alone with female inmates, posed a risk to the inmates' health and safety. The court noted that the sheriff's actions in calling for an

investigation and terminating the jailer's employment upon learning of the jailer's actions was not an "indifferent and objectively unreasonable response" to the inmate's claims, and thus, there was no violation of the inmate's rights. The court held that the jail's staffing did not pose a "substantial risk of serious harm" to the inmate who was sexually assaulted by a jailer, as required to show violation of the Eighth Amendment and Georgia constitution, absent evidence that the jail was inadequately staffed. According to the court, the county did not have a policy or custom of underfunding and understaffing the jail, as would constitute deliberate indifference to a substantial risk of serious harm to the inmate, and thus the county could not be liable under § 1983 to the inmate who was sexually assaulted by a jailer. The court found that the sheriff's failure to train deputies and jailers in proper procedures for escorting and handling female inmates did not support supervisory liability on the § 1983 claim of the inmate, where the sheriff had no knowledge of any prior sexual assaults at the jail or any problems with jailers improperly escorting and handling female inmates, and the jailer who committed the assault had been trained previously on how to interact with inmates and knew it was improper to have intimate contact with inmates. During the time period in question, the county did not have a policy prohibiting a male jailer from escorting a female inmate within the Jail. The court held that the county and sheriff had sovereign immunity from the state law claims of the inmate, absent evidence that such immunity had been waived by an act of the General Assembly. (Berrien County Jail, Georgia)

U.S. District Court
MEDICAL CARE

Brace v. Massachusetts, 673 F.Supp.2d 36 (D.Mass. 2009). The administrator of a female detainee's estate sued the Commonwealth of Massachusetts and a number of individuals having some role in providing medical services to inmates at a county correctional facility, including a clinician, asserting claims for negligence and medical malpractice, and alleging that the detainee was deprived of her constitutional rights by deliberate indifference to her medical needs. A clinician moved to dismiss certain counts. The district court allowed the motion in part and denied in part. The court held that dismissal of a medical malpractice claim after a medical tribunal found that there was insufficient evidence to raise a legitimate question of liability did not preclude the deceased detainee's estate from stating a § 1983 claim against a prison clinician for deliberate indifference to the inmate's medical needs. The court held that the deceased detainee's estate stated a § 1983 wrongful death claim against the jail clinician for deliberate indifference to the inmate's medical needs, in violation of her Eighth and Fourteenth Amendment rights. The estate alleged that the clinician observed the detainee while she was in obvious medical distress and took the minimal step of making a phone call to a medical unit about the detainee's condition. (Hampden County House of Correction, Massachusetts)

U.S. District Court
MEDICAL CARE

Brickell v. Clinton County Prison Bd., 658 F.Supp.2d 621 (M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. According to the court, the county's alleged negligence in the training of kitchen staff at the county jail was not sufficiently shocking to support the inmate's § 1983 due process claim pursuant to a state-created danger theory based on the inmate's allegation that she suffered severe burns while transferring a hot container from a stove to a top shelf of upright warmers, even if the county officials knew or should have known that the inmate was physically unable to place the container on the top shelf in a safe fashion. (Clinton County Prison Board, Clinton County Correctional Facility, Pennsylvania)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Chao v. Ballista, 630 F.Supp.2d 170 (D.Mass. 2009). A former state prisoner brought a § 1983 action against officials at the Massachusetts Department of Correction (DOC), alleging that the officials failed to properly investigate and protect her from sexual abuse by a prison guard. The officials moved to dismiss the complaint on a number of grounds. The district court held that the former prisoner was not subject to the Prison Litigation Reform Act's (PLRA) exhaustion requirement. The court found that the former prisoner's allegations in her amended complaint that, over the course of a year, she and the prison guard engaged in 50 to 100 sexual encounters in a prison facility without detection, that the guard had a sexual relationship with at least one other female inmate, that sexual encounters continued even after the guard was reassigned to different duties, and that a prison nurse placed the prisoner on oral contraceptive pills during the relevant time period, sufficiently stated a § 1983 claim against prison officials. The district court held that DOC officials were not entitled to qualified immunity, given the extent of the abuse, the numerous warning signs alleged, and the available sources of information. (South Middlesex Correctional Center, Massachusetts)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
SUICIDE

Edwards v. District of Columbia, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before

bringing an action under FTCA and that the court lacked subject matter jurisdiction over the FTCA claims and claims against the District. (District of Columbia Jail)

U.S. Appeals Court
SUICIDE

Estate of Enoch ex rel. Enoch v. Tienor, 570 F.3d 821 (7th Cir. 2009). The estate and minor sisters of an 18-year-old female prisoner who committed suicide while on suicide watch at a correctional institution brought an action against correctional officers and staff, alleging violations of the prisoner's civil rights and seeking \$5 million for the estate plus \$5 million for the sisters. After accepting the defendants' offer of a judgment for \$635,000, the plaintiffs filed a motion requesting \$328,740 in attorney fees. The district court awarded \$100,000 to the plaintiffs, with \$1,500 to be taxed as fees for the guardian ad litem. The plaintiffs appealed. The appeals court reversed and remanded, holding that the fact that the case was settled for \$635,000 did not warrant a reduction in the requested attorney fees. The court noted that \$635,000 was not a nominal award, and the Farrar analysis for determining attorney fees, which considered the extent of relief compared to the relief sought, was not relevant in cases in which the recovery was not merely nominal. The court found that the district court did not abuse its discretion in awarding \$1,500 in fees to the guardian ad litem. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
EQUAL PROTECTION
MEDICAL CARE

Flynn v. Doyle, 672 F.Supp.2d 858 (E.D.Wis. 2009). Female inmates filed a class action alleging that medical, dental, and mental health care provided to prisoners at a state facility violated the Eighth Amendment, Equal Protection Clause, Title II of Americans with Disabilities Act, and Rehabilitation Act. The officials moved for partial summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether there were systemic and gross deficiencies in staffing, facilities, and procedures at the state correctional facility that resulted in provision of inadequate medical care for female inmates. The court also found that summary judgment was precluded on the inmates' claim that the state violated Title II of ADA by failing to provide access to programs to inmates with mobility, visual, and hearing disabilities. The court found a genuine issue of material fact as to the effectiveness of accommodations offered to disabled inmates at a state correctional facility. The court found that the female inmates' allegation that the state provided inpatient mental health services for male inmates, but not for female inmates, was sufficient to state claim against the state under the Equal Protection Clause, despite the state's contention that the disparity was natural outgrowth of the historically small number of female inmates in the state. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
PRIVACY
SEARCHES

Forde v. Zickefoose, 612 F.Supp.2d 171 (D.Conn. 2009). A federal prisoner petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First and Fourth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted the government's motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by issues of fact as to: (1) whether the prisoner's exercise of her religion was substantially burdened by the prison's non-emergency cross-gender pat-down search policy; (2) whether the prisoner's exercise of her religion was substantially burdened by the prison's policy of requiring her to carry an identification photograph that showed her without a hijab to cover her head; and, (3) whether the prisoner's exercise of her religion was substantially burdened by the prison's failure to provide an imam during Ramadan. The court held that the prison's non-emergency cross-gender pat-down search policy did not violate the prisoner's limited right, under the Fourth Amendment, to bodily privacy. According to the court, although the prisoner made a sufficient showing of a subjective expectation of privacy, the expectation would not be considered reasonable by society, since the prison had a legitimate penological interest in security and in providing equal employment opportunities to both male and female staff, and no available further accommodation was reasonable under the circumstances. (Federal Correctional Institution, Danbury, Connecticut)

U.S. Appeals Court
DISCIPLINE

Foster v. Runnels, 554 F.3d 807 (9th Cir. 2009). A female inmate brought a civil rights action against a prison official, alleging the official deprived her of 16 meals over a 23-day period in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered summary judgment for the official, and the inmate appealed. The appeals court reversed and remanded. The court held that the official's conduct in allegedly depriving the inmate of 16 meals over a 23-day period for the inmate's failure to remove a paper from the rear window of her cell was a sufficiently serious deprivation of a life necessity, as required to establish violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The court noted that the official's argument-- that the alleged deprivation was due to the inmate's personal choice not to comply with a prison policy-- failed to demonstrate how the inmate's failure to remove a paper from a window jeopardized her safety or security during in-cell feeding. The court found that the official was not entitled to qualified immunity because the inmate's right to adequate meals was clearly established, and the case law alerting prison officials to their obligations to provide inmates with adequate meals should have put the official on notice of her Eighth Amendment rights. (High Desert State Prison, California)

U.S. District Court
SEXUAL ASSAULT

Hall v. Terrell, 648 F.Supp.2d 1229 (D.Colo. 2009). A female detainee brought a § 1983 action against a correctional officer, alleging that he raped her while she was in custody. Following entry of default judgment against the officer, a bench trial to determine damages, and the entry of a judgment awarding compensatory and punitive damages, the detainee moved for prejudgment interest and attorney fees. The district court granted the motion for attorney fees in part. The court held that the Prison Litigation Reform Act (PLRA) applied to the detainee's request for attorney fees where the detainee was, at every stage of the lawsuit, a prisoner confined to a correctional facility, she was the prevailing party in her suit, and the suit was an action in which attorney fees were authorized under § 1988. The court held that the reasonable hourly rate for the lodestar amount, in determining the award of attorney fees under PLRA, was the hourly rate for Criminal Justice Act (CJA) appointments in Tenth Circuit and District of Colorado. According to the court, under PLRA, the appropriate hourly rate for the award of paralegal fees was 64% of the average rate that she had requested for non-senior

attorneys, and for an assistant was 50% of such rate. The court held that under PLRA, 10 percent was the appropriate percentage of the judgment obtained by the detainee against the corrections officer, where the factor of the opposing party's culpability or bad faith favored the detainee, the factor of ability to satisfy the award of attorney fees suggested that the detainee should bear some portion of attorney fees, and the factor of the possibility that the award might deter other persons favored the detainee. The district court had awarded \$1,354,070 in damages, comprised of \$354,070.41 in compensatory damages and \$1 million in punitive damages. (Denver Women's Correctional Facility, Colorado)

U.S. District Court
CHILDREN
MEDICAL CARE
PREGNANCY

Havard v. Puntner, 600 F.Supp.2d 845 (E.D.Mich.,2009). The guardian of a minor child, who was born in a county jail while her mother was incarcerated there, brought a § 1983 action against jail employees for injuries sustained during and immediately after the birthing process. The district court denied the employees' motion to dismiss. The court held that the minor child was a "person" within the Fourteenth Amendment at the time of her § 1983 claims against jail employees, for injuries allegedly sustained as a result of alleged unconstitutional conduct during and immediately after the birthing process. The child was allegedly injured by the employees' failure to provide medical attention to the mother in violation of the child's due process rights, such that the child was not in a hospital at the time of her birth, the physicians and the facilities of the hospital were not available to resuscitate her when she was born, and she was not resuscitated until she arrived at the hospital following transport from the jail, at which time she had no respiration or heartbeat.

The court found that deputies and a nurse at the county jail were not entitled to qualified immunity from the § 1983 action brought on behalf of the minor child, where the constitutional duty to care for helpless infants who have newly come into the world, including the duty to care for them by anticipation, during the birthing process, was clearly established at the time of the birth. The court noted that the defendants allegedly left the mother in her cell for two hours even though they were aware that she was in active labor, crying out for help, and that, once called, paramedics did not arrive until the child was being delivered and did not have the equipment to resuscitate the child when she was delivered. (Wayne County Jail, Michigan)

U.S. District Court
MEDICAL CARE

Jennings v. Hart, 602 F.Supp.2d 754 (W.D.Va. 2009). The administrator of an inmate's estate brought an action against a sheriff and several other current or former officers in a county sheriff's department, alleging claims under § 1983 and a state wrongful death act for one officer's alleged wrongful denial of medical care to an inmate in the county jail. The district court denied the officers' motion to dismiss on the grounds of sovereign immunity. The district court held that the officers lacked the discretion to keep the inmate at the jail and deny her the opportunity to be seen by a neurologist or other medical professional for ten days following referral by a nurse practitioner. The officers allegedly ignored the inmate's repeated requests for help and worsening physical condition, including severe headaches, dizziness, pressure in her head, loss of appetite, and fluid drainage in her ears. By the time the officers contacted outside medical professionals, the inmate was suffering from brain abscesses and a stroke which lead to her death. (Culpeper County Jail, Virginia)

U.S. Appeals Court
SEXUAL ASSAULT

Kahle v. Leonard, 563 F.3d 736 (8th Cir. 2009). An individual who was raped by a trainee corrections officer while she was a pretrial detainee, brought a § 1983 action against the trainee corrections officer and other public officials and entities. After a jury found the trainee corrections officer liable and awarded damages, the district court granted the plaintiff's motion for attorneys' fees. The trainee corrections officer appealed. The appeals court affirmed in part and remanded in part. The court held that the district court did not abuse its discretion by admitting the plaintiff's psychologist's report as a supplemental report, and the district court's jury instructions did not constitute an abuse of discretion. The district court applied one percent of the detainee's \$1.1 million judgment (\$11,000) to attorneys' fees. With the detainee's legal expenses totaling \$186,208.88, the defendant was responsible for \$175,208.88 in attorneys' fees, in addition to the \$1.1 million judgment. The appeals court did not affirm the award of only one percent and remanded the case for further proceedings. (Pennington County Jail, South Dakota)

U.S. Appeals Court
MEDICAL CARE

Mann v. Taser Intern., Inc., 588 F.3d 1291 (11th Cir. 2009). The administrators of an estate, the husband, and guardians of the children of an arrestee who died following her arrest by sheriff's deputies and her admission to a county jail, brought an action under § 1983 and state law against the deputies and the manufacturer and distributor of the stun gun used by deputies during the arrest. The district court granted summary judgment to the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the use of the stun gun constituted reasonable force where the arrestee's behavior was violent, aggressive and prolonged, demonstrating that she was clearly a danger to herself and others, and the deputy warned the arrestee to stop her behavior and discharged his stun gun only after she refused to comply with the his orders. According to the court, the plaintiffs failed to establish that the arrestee's death was caused by the use of a stun gun. The court noted that the plaintiffs' own medical expert testified that, while it would have been naive of him to say that the use of the stun gun did not contribute in some degree to the arrestee's death, he was unable to declare to a reasonable degree of medical certainty that the arrestee would have survived but for its use.

The court held that the sheriff's deputies were not deliberately indifferent to the arrestee's serious medical condition of "excited delirium" when they opted to take her to jail instead of to a hospital. Although one deputy had knowledge of the arrestee's past methamphetamine use, and the arrestee's mother and another person told a different deputy that the arrestee was sick and needed to go to the hospital, the deputies had no prior knowledge of the medical condition called "excited delirium" or its accompanying risk of death. The court noted that the arrestee's physical resistance and verbal communication suggested to the deputies that, although agitated, the arrestee was not in immediate medical danger, which was an opinion shared by emergency medical personnel called to the scene by the deputies. (Whitfield County Sheriff's Office, Georgia)

U.S. Appeals Court
MEDICAL CARE
PREGNANCY

Nelson v. Correctional Medical Services, 583 F.3d 522 (8th Cir. 2009). A state inmate brought a § 1983 action against the director of the Arkansas Department of Correction (ADC), and a corrections officer, alleging that while giving birth to her child she was forced to go through the final stages of labor with both legs shackled to her hospital bed in violation of the Eighth Amendment. The district court denied the defendants' motion for

summary judgment. On rehearing en banc, the Court of Appeals affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections officer's conduct in forcing the inmate to go through the final stages of labor with both legs shackled to her hospital bed constituted "deliberate indifference" in violation of the Eighth Amendment. The appeals court held that the inmate, in the final stages of labor, had a "clearly established" right not to be shackled absent clear and convincing evidence that she was a security or flight risk, and thus a government official would not be protected from § 1983 liability for violating that right based on qualified immunity. (Arkansas Department of Correction, McPherson Unit)

U.S. District Court
MEDICAL CARE

Parlin v. Cumberland County, 659 F.Supp.2d 201 (D.Me. 2009). A female former county jail inmate brought an action against jail officers, a county, and a sheriff, under § 1983 and Maine law, alleging deliberate indifference to her serious medical needs, negligence, and excessive force. The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officers were not deliberately indifferent to a serious medical need; (2) an officer who fell on the inmate did not use excessive force; (3) the county was not liable for deprivation of medical care; and (4) the county was not liable for failure to train. The court held that the officers were not entitled to absolute immunity from excessive force claims where a genuine issue of material fact existed as to whether the officers used excessive force in transferring the jail inmate between cells. According to the court, there was no evidence that jail officers were subjectively aware of the jail inmate's serious medical condition, where the inmate made no mention of her shoulder injury to the officers other than crying out "my shoulder" after she had fallen. (Cumberland County Jail, Maine)

U.S. District Court
PRIVACY
SUICIDE

Reinhart v. City of Schenectady Police Dept., 599 F.Supp.2d 323 (N.D.N.Y. 2009). An arrestee brought a § 1983 action against a city, police department and officers, alleging Fourth Amendment violations following her arrest for allegedly making harassing telephone calls. The district court granted summary judgment for the defendants. The court held that probable cause existed to commence the criminal action and perform the arrest, and that the suspicionless seizure of the arrestee's brassiere while incarcerated qualified as a "special need" for Fourth Amendment purposes. The court noted that the police department had a policy of seizing brassieres purely as a safety measure to preclude their use as a suicide tool, and the policy was implemented in a manner reasonably designed to reduce intrusion on the arrestee's privacy by allowing her to remove the brassiere without disrobing. (Schenectady Police Department, New York)

U.S. Appeals Court
EQUAL PROTECTION
TRANSFER

Roubideaux v. North Dakota Dept. of Corrections and Rehabilitation, 570 F.3d 966 (8th Cir. 2009). North Dakota prison inmates, representing a certified class of female inmates, brought a sex discrimination suit under § 1983 and Title IX, alleging that a state prison system provided them with unequal programs and facilities as compared to male inmates. The district court granted summary judgment in favor of the defendants and the inmates appealed. The appeals court affirmed. The court held that North Dakota's gender-explicit statutes, allowing the Department of Corrections and Rehabilitation to place female inmates in county jails and allowing the Department to place female inmates in "grade one correctional facilities" for more than one year, was substantially related to the important governmental objective of providing adequate segregated housing for female inmates, and thus the statutes were facially valid under heightened equal protection review. According to the court, even if the decision to house them at the women's center was based on economic concerns, where the female prison population as a whole was much smaller than the male population, sufficient space to house the female prisoners was becoming an issue as the entire prison population increased. Female inmates were in need of a separate facility to better meet their needs, and statutes expressly required the Department to contract with county facilities that had adequate space and the ability to provide appropriate level of services and programs for female inmates. The court held that the female inmates, by expressing an assertion before the district court that they were not challenging the programming decisions made by Department of Corrections and Rehabilitation upon transfer to county jails for housing, abandoned an "as-applied" challenge to the gender-explicit statutes facilitating such transfers. The court held that North Dakota's "prison industries" program offered at a women's correction and rehabilitation center, under contract between several counties and the state, was not an "educational program" subject to Title IX protections, even though the program provided on-the-job training. The court noted that the program was primarily an inmate work or employment program, providing female inmates with paying jobs and enabling them to make purchases, pay restitution, or support their families, and the contract between the counties and state distinctly separated inmate employment and educational programs. According to the court, vocational training offered at the center was not discriminatorily inferior to those offered to male inmates at state facilities, as required for a claim under Title IX. Although locational differences existed, like male inmates, female inmates had access to a welding class and classes in basic parenting, social skills, speech, and healthy lifestyles. (Southwest Multi-County Correctional Center, North Dakota)

U.S. Appeals Court
PRIVACY
SEARCHES

Schmidt v. City of Bella Villa, 557 F.3d 564 (8th Cir. 2009). An arrestee brought a § 1983 action against a police chief and city, alleging the chief's photographing of her tattoo violated her rights. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed. The court held that the chief's photographing of the arrestee's tattoo was not an unreasonable search and did not violate due process, and the photographing of the arrestee's tattoo did not amount to a strip search under Missouri strip search law. The court found that the action of photographing the tattoo did not violate the Fourth Amendment, despite the fact that the arrestee was required to unzip her pants for the photograph and that the photograph was taken by male officer. The court concluded that the photograph served legitimate law enforcement purposes, the chief told the arrestee that photograph was needed for identification purposes, and the photograph was taken in private. The court noted that the arrestee gave a false date of birth and social security number. She was arrested for making a false declaration and for being a minor in possession of alcohol. (City of Bella Villa, Missouri)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 598 F.Supp.2d 115 (D.Me. 2009). After granting a detainee's motion for summary judgment on liability under § 1983 for a strip search she underwent at a county jail, the county moved to exclude the detainee's evidence of lost income or profits allegedly caused by her mental distress growing out of the strip search. The district court granted the motion in part and denied in part. The court held that the detainee's tardy pretrial disclosure of economic loss information did not prejudice the county's ability to investigate so as to warrant the exclusion of evidence of the detainee's evidence of lost income or profits. The court found that damages for economic loss based upon a lost future contract were not recoverable in the civil rights suit seeking damages allegedly caused by the detainee's mental distress, since the jury would have to speculate in order to determine whether the detainee suffered an economic loss on a future contract and, if so, how much. (Knox County Jail, Maine)

U.S. District Court
CLOTHING
PRIVACY

Zargary v. The City of New York, 607 F.Supp.2d 609 (S.D.N.Y. 2009). A prisoner, who wore a headscarf as an Orthodox Jew, brought an action against a city, alleging that the city's practice or custom of removing head coverings from prisoners before taking photographs during admittance to a correctional facility violated her rights under the Free Exercise Clause of the First Amendment. The court entered judgment in favor of the city. The court held that the city correctional facility's practice or custom of removing head coverings from prisoners before taking photographs during their admittance to a facility was rationally related to the legitimate penological interest of being able to identify prisoners accurately to maintain security, and that the practice did not violate the Free Exercise Clause of the First Amendment. The court noted that the prisoner could dramatically change her appearance by removing the headscarf, making it more difficult to identify her, which would pose a security risk. According to the court, the prisoner had other means to express her religious beliefs in prison, the corrections officers attempted to accommodate the prisoner by minimizing the presence of male officers in the room when the photograph was taken, and the alternative of not removing the headscarf could not be said to pose only a de minimis security risk. (Rose M. Singer Correctional Facility, New York)

2010

U.S. District Court
MEDICAL CARE
PREGNANCY
RESTRAINTS

Brawley v. Washington, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion for summary judgment, which the district court granted in part and denied in part. The court held that the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. District Court
MEDICAL CARE
PREGNANCY

Castro v. Melchor, 760 F.Supp.2d 970(D.Hawai'i 2010). A female pretrial detainee brought a § 1983 action against correctional facility officials and medical staff, alleging the defendants were deliberately indifferent to his serious medical needs resulting in the delivery of a stillborn child. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's medical staff subjectively knew the pretrial detainee's complaints of vaginal bleeding presented a serious medical need. The court held that the staff's failure to ensure the detainee received an ultrasound and consultation was no more than gross negligence, and the medical staff did not deny, delay, or intentionally interfere with the pretrial detainee's medical treatment. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the correctional facility officials' actions and inactions in training the facility's medical staff resulted in the alleged deprivation of the pretrial detainee's right to medical treatment and whether the officials consciously disregarded serious health risks by failing to apply the women's lock-down policies. Following a verbal exchange with a guard, two officers physically forced the detainee to the ground from a standing position. While she was lying on the ground on her stomach, the officers restrained her by holding their body weights against her back and legs and placing her in handcuffs. The detainee was approximately seven months pregnant at the time. (Oahu Community Correctional Center, Hawai'i)

U.S. District Court
PRIVACY
SEARCHES

Chase v. District of Columbia, 723 F.Supp.2d 130 (D.D.C. 2010). A pretrial detainee brought a § 1983 action for monetary damages against the District of Columbia and the operator of the District's Correctional Treatment Facility (CTF), alleging violations of the Fourth, Fifth and Eighth Amendments, as well as invasion of privacy, while under arrest, during interrogation, and while in jail and CTF. The defendants moved to dismiss. The district court granted the motions. The court held that the District did not have a custom or policy that caused the detainee to be videotaped while naked and changing her clothes in an interrogation room, thereby precluding the detainee's municipal liability claim alleging that the videotaping was an unreasonable search in violation of the Fourth Amendment. The court found that the detainee had not been adjudicated of any crime and was not subject to punishment, thereby precluding her Eighth Amendment claim. (District of Columbia, Corrections Corporation of America, Correctional Treatment Facility)

U.S. District Court
CONDITIONS
EQUAL PROTECTION
FAILURE TO PROTECT
SEXUAL ASSAULT

Dodge v. Shoemaker, 695 F.Supp.2d 1127 (D.Colo. 2010). A state prisoner brought a § 1983 action, proceeding in forma pauperis, against prison officials, alleging that she was raped by a lieutenant while incarcerated, and asserting various due process, equal protection, and Eighth Amendment violations. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issue of whether the state prisoner's placement in administrative segregation for a period of one year violated her due process rights could not be determined at the motion to dismiss stage of the prisoner's § 1983

action against prison officials, because of a factual dispute as to whether the duration of confinement was atypical and significant. According to the court, the contours of constitutional law were sufficiently clear that the state prison officials were on notice that assignment of a prisoner to administrative segregation under conditions that imposed a significant and atypical hardship in relation to the ordinary incidents of prison life could give rise to a liberty interest protected by due process, and, thus, the officials were not entitled to qualified immunity in the prisoner's § 1983 action, with respect to her due process claim. (Denver Women's Correctional Facility, Colorado)

U.S. District Court
TRANSSEXUAL
MEDICAL CARE

Fields v. Smith, 712 F.Supp.2d 830 (E.D.Wis. 2010). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The court held that: (1) GID or transsexualism was a "serious medical need" for the purposes of the Eighth Amendment; (2) as matter of first impression, enforcement of the statute against the inmates violated the Eighth Amendment; (3) as matter of first impression, the statute was facially unconstitutional under the Eighth Amendment; (4) the possibility that certain inmates seeking treatment for gender issues might have had conditions not requiring hormone therapy did not repel a facial challenge to the statute; and (5) as matter of first impression, the statute violated the Equal Protection Clause both as applied to the inmates and on its face. The district court granted the motion, issuing a "...permanent injunction that restrains the defendants from enforcing or attempting to enforce the provisions of Wis. Stat. § 302.386(5m), by direct, indirect or other means, against any prisoner to whom the statute would otherwise apply and specifically against the plaintiffs." (Wisconsin Department of Corrections)

U.S. District Court
SEARCHES

Forde v. Baird, 720 F.Supp.2d 170 (D.Conn. 2010). A federal inmate petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the defendants, in part, and denied in part. The court held that the Muslim inmate's right to free exercise of religion was substantially burdened, as required to support her claim under RFRA, by a prison policy allowing for non-emergency pat searches of female inmates by male guards, despite prison officials' claim that the inmate's belief was not accurate. The court found that the choice offered the inmate, of violating her understanding of the precepts of Islam, or refusing a search and risking punishment, constituted a substantial burden.

The court found that the prison's interest in maintaining safety and security of the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA, where the prison's arguments regarding how and why the cross-gender pat searches promoted safety and security at the prison were actually related to the staffing of the facility, not to its safety and security. According to the court, the prison's interest in avoiding staffing and employment issues at the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA. The court noted that even if the prison's interests in maintaining safety and security and avoiding staffing and employment issues were compelling, cross-gender pat searches were not the least restrictive means of addressing these interests, as required to justify the substantial burden on an inmate's right of free exercise of religion under RFRA, absent evidence that the prison considered and rejected less restrictive practices to cross-gender pat searches. (Federal Correctional Institution in Danbury, Connecticut)

U.S. Appeals Court
MEDICAL CARE

Gayton v. McCoy, 593 F.3d 610 (7th Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. But the appeals court held that the district court abused its discretion in finding the physician unqualified to offer expert testimony that the detainee's vomiting combined with her diuretic medication may have contributed to her tachycardia and subsequent death from non-specific heart failure.

The court held that a correctional facility nurse who examined the detainee during intake was not deliberately indifferent to his serious medical needs posed by her heart condition, as required to establish violation of the detainee's due process right to adequate medical care in the § 1983 action. The court noted that, even though the nurse failed to follow the facility's protocol requiring her to contact a doctor when an inmate complained of chest pains, the nurse placed the detainee on a list to have her vital signs checked each morning, and the nurse arranged for the detainee to get her congestive heart failure medication. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the nurse who examined the detainee following her complaints of nausea was deliberately indifferent to his serious medical needs posed by her heart condition and vomiting. In its decision, the court noted that "On the other hand, Nurse Pam Hibbert was presented with ample evidence that Taylor needed medical treatment." (Peoria County Jail, Illinois)

U.S. District Court
SEXUAL ASSAULT
SEXUAL HARASSMENT

Hawkins v. Brooks, 694 F.Supp.2d 434 (W.D.Pa. 2010.) A state prisoner brought a pro se § 1983 action against various prison officials and corrections officers, alleging retaliation, harassment, due process violations, defamation of character, and mental anguish. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's conduct of pressing charges against a

corrections officer who the prisoner claimed raped and impregnated her and complaining about other officers' alleged harassment amounted to a "constitutionally protected activity," as required for the prisoner to state a § 1983 retaliation claim. The court found that corrections officers' alleged conduct of withholding the prisoner's incoming and outgoing mail in retaliation for the prisoner's pressing rape charges against an officer at another prison amounted to an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim against the officers. But the court found that a prison official's alleged conduct of reassigning the prisoner to a different unit in the same prison did not rise to the level of an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim. The court found that the prisoner had no liberty interest in her place of confinement, transfer, or classification, and thus, prison officials' alleged refusal to have the prisoner transferred to an out-of-state institution did not violate her due process rights. The court found that the prisoner's assertions that she made supervisory prison officials aware of the harassment and retaliation she allegedly suffered at the hands of correctional officers as a result of her pressing rape charges against a correctional officer at another facility, and that none of the supervisory officials offered assistance or took any corrective action, were sufficient to state a claim for supervisory liability, in her § 1983 retaliation action. (State Correctional Institution at Cambridge Springs, Pennsylvania)

U.S. District Court
MEDICAL CARE
SUICIDE

Jessup v. Miami-Dade County, 697 F.Supp.2d 1312 (S.D.Fla. 2010). A pre-trial detainee who had been placed on suicide precaution status at a county detention center for women, filed a state action against a corrections officer and the county, asserting negligence and claims under § 1983 for the officer's deliberate indifference to his serious medical needs, and against the county for failure to train or discipline staff. The defendants removed the case to federal court and moved for summary judgment. The district court granted the motion. The court held that the detainee's actions of drinking from a toilet, smearing menstrual blood on a window, and stepping on and off a ledge in her cell, did not indicate a "strong likelihood" that she was about to inflict self-harm, as required for jail officials to be liable for deliberately disregarding the detainee's serious medical needs in violation of the Fourteenth Amendment, when they failed to place her in four-point restraints. The detainee subsequently injured her head. The court noted that the detainee's activities were bizarre but not violent, aggressive or out of control as would require restraints. According to the court, a jail official did not act in a fashion "beyond gross negligence," as required to hold her liable for deliberate disregard of the pre-trial detainee's serious medical needs, in violation of the Fourteenth Amendment, when the official failed to act to stop the detainee from self-inflicting head and nose injuries by banging her head against a cell wall during her confinement after being placed on a suicide watch. The officials immediately ordered the detainee to stop head banging activity and tried to open her cell. (Miami-Dade Women's Detention Center, Florida)

U.S. District Court
SEARCHES

Kendrick v. Faust, 682 F.Supp.2d 932 (E.D. Ark. 2010). A female state prison inmate brought a § 1983 action against employees of the Arkansas Department of Correction (ADC), alleging various violations of her constitutional rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court found that an ADC employee's use of force against the inmate was justified by the inmate's disruptive behavior during the search of her cell and thus did not give rise to the ADC employee's liability on an excessive force claim. The inmate alleged that the ADC employee grabbed her by the arm, dragged her from her cell, and threw her into the shower. The court note that there was no medical evidence that the ADC employee's use of handcuffs caused any permanent injury to the inmate as required to support a claim that the employee used excessive force against the inmate. (Arkansas Department of Corrections)

U.S. District Court
TRANSSEXUAL
MEDICAL CARE

Konitzer v. Frank, 711 F.Supp.2d 874 (E.D.Wis. 2010). A prisoner, a biological male suffering from Gender Identity Disorder (GID), brought an action against prison officials alleging violation of Eighth Amendment's prohibition against cruel and unusual punishment by denying him certain medical services related to his disorder. The district court granted summary judgment for the prison officials in part and denied in part. The court held that the prisoner's Gender Identity Disorder (GID) was a "serious medical need," as required to establish the prisoner's § 1983 claim alleging that denial of his request for the opportunity to live as a female, as part of his treatment for GID, violated his Eighth Amendment rights. According to the court, although the prisoner had received some hormonal therapy to provide relief from GID symptoms, denial of the opportunity to live as a female allegedly caused the prisoner to be depressed, resulting in self-mutilation of his genitals and suicide attempts. The court held that summary judgment was precluded by a genuine issue of material fact as to whether triadic therapy for Gender Identity Disorder (GID), which consisted of hormone therapy, real-life experience living as the preferred gender, and sex reassignment surgery, was the appropriate treatment for the prisoner. The court also found that summary judgment was precluded by genuine issues of material fact regarding whether prison officials' denial of a request by the male prisoner to live as a female by, for example, wearing makeup and female undergarments and removing facial hair, constituted deliberate indifference to the prisoner's serious medical needs, and whether security concerns justified such denial. (Wisconsin Department of Corrections)

U.S. District Court
SEXUAL ASSAULT

Mitchell v. Rappahannock Regional Jail Authority, 703 F.Supp.2d 549 (E.D.Va. 2010). A female inmate brought an action against a regional jail authority and correctional officers who held the ranks of colonel, lieutenant, captain, sergeant, and corporal, alleging under § 1983 that the defendants violated the Eighth Amendment, and asserting state-law claims for assault and battery, gross negligence, and negligent retention. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations in her complaint: (1) of over ten instances of sexual assaults by a correctional officer, under circumstances where his superiors were in a position to have knowledge of what was happening at various times; (2) that each named superior witnessed or participated in several of those actions; (3) that all superiors had direct knowledge of the officer's personal remarks to the inmate; (4) and that the officer's obsession with the inmate was a matter of commentary among all correctional staff, were sufficient to state a § 1983 Eighth Amendment claim for supervisory liability against the superiors. The inmate also alleged that each superior witnessed several inci-

dents where the officer followed the inmate into a storage room and assaulted her. The inmate also alleged that a corporal, who was in charge of inmate workers, witnessed the correctional officer, in violation of jail regulations, approach her several times while working in the kitchen, and that the corporal told the inmate not to be rude to the officer or she would be fired from her job after the inmate asked the corporal to prevent the officer from moving behind the counter. (Rappahannock Jail Authority, Rappahannock Regional Jail, Virginia)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) *affirmed in part* 678 F.3d 500. The guardian of the estate of a pretrial detainee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a city and city police officers, alleging civil rights violations in connection with the detainee's arrest and subsequent release from custody without being provided access to mental health treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee, who exhibited drastic and unnatural behavior throughout her 28-hour detention, had a serious mental health condition. The court also found a genuine issue of material fact as to whether the arresting city police officer, and other police employees, who witnessed the arrestee singing rap lyrics, taking her clothes off and dancing provocatively for different men, acting erratically, discussing the price of oil, and screaming bizarre and vulgar statements, among other things, had notice that the arrestee had a serious mental health condition that required medical attention. The court noted that a city police officer, who spoke on the telephone with the detainee's mother, and was informed by her mother that the detainee was likely bipolar and might be having an episode, had notice that the detainee had a serious mental health condition that required medical attention, precluding summary judgment. The court also found genuine issues of material fact as to whether a city police officer, who had actual knowledge of the pretrial detainee's mental health condition based on observations of her behavior while in custody, placed the detainee in a position of heightened risk when she released the detainee from the police station and pointed her toward an area known for violent crime, without providing the detainee with food, money, or medication, and as to whether the officer's conduct "shocked the conscience." The court identified a fact issue as to whether the detainee would not have been raped and seriously injured absent a city police officers' failure to provide the detainee with psychiatric care.

The court held that city police officers were not entitled to qualified immunity from the § 1983 claim brought by the mother of the detainee, for unreasonably failing to provide the detainee with mental health care under the Fourth Amendment, as it was clearly established that pretrial detainees were entitled to mental health treatment for serious mental health conditions. On appeal (678 F.3d 500), the appeals court held that the arresting officer was entitled to qualified immunity. The district court also denied qualified immunity for the city police officer who released the detainee, where the law was clearly established that the officer could not release the detainee from custody in a manner that increased her risk of harm. (Chicago Police Department, Illinois)

U.S. Appeals Court
SEXUAL ASSAULT

Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010). A female detainee filed a § 1983 suit against a sheriff and a deputy, individually and in their official capacities, alleging failure to train the deputy, who had sexually assaulted the detainee. After bench trial the district court granted in part and denied in part the sheriff's motion for summary judgment. The sheriff and the detainee cross-appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff in his official capacity was not liable for the deputy's inadequate training, and that the sheriff in his individual capacity was entitled to qualified immunity from the failure to train claim. The court noted that although the deputy received minimal training at best for his law enforcement position, the inadequacy of his training was not so likely to result in violation of the constitutional rights of the detainee, so that the county could reasonably be said to have been deliberately indifferent to the need for training, especially when the county had no notice at all that a sexual assault was likely. According to the court, there was no patently obvious need to train the deputy not to sexually assault women, and the sexual assault was a consequence too remote to conclude that failure to train the deputy caused him to sexually assault the detainee. (Hot Spring County Sheriff's Department and Jail, Arkansas)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE

Pourmoghani-Esfahani v. Gee, 625 F.3d 1313 (11th Cir. 2010). A female pretrial detainee brought a § 1983 action against a deputy sheriff, alleging excessive force and deliberate indifference to her serious medical needs. The district court denied the deputy's motion for summary judgment and the deputy appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the deputy sheriff was not qualifiedly immune from the pretrial detainee's § 1983 excessive force claim, since the deputy's alleged actions, including slamming the detainee's head to the floor seven to eight times while she was restrained, if proven, were obviously beyond what the Constitution would allow under the circumstances.

The court held the deputy sheriff's alleged actions or inactions following her altercation with the pretrial detainee, if proven, did not constitute deliberate indifference to the detainee's serious medical needs, where: the detainee alleged that the deputy dispatched her to her cell directly after the altercation; the nurse saw her within approximately two minutes of her arrival in the cell; the nurse informed the deputy that the detainee had a possible nose injury but that her nose was not broken; the nurse and an officer then attended to the detainee within approximately five minutes of the detainee's cellmate's first signals for help; and, the detainee then received continuous medical care until she was taken to hospital. The court noted that no preexisting law clearly established that an approximately two-to-five-minute delay of medical care, either while the detainee moved from a waiting room to her cell following an altercation or while her cellmate waited for the guard to respond to her signaling, was a constitutional violation.

The appeals court accepted the depiction of events from recordings from closed-circuit video cameras placed throughout jail, rather than crediting the detainee's account of the altercation, where the video obviously contradicted the detainee's version of the facts. But the court noted that video failed to convey spoken words or tone and sometimes failed to provide unobstructed views of the events, and the court credited the detainee's version where no obviously contradictory video evidence was available. (Hillsborough County Jail, Florida)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Qasem v. Toro, 737 F.Supp.2d 147 (S.D.N.Y. 2010). A female inmate brought a § 1983 suit against corrections officials regarding injuries suffered by the inmate at the hands of a corrections officer alleged to have sexually assaulted the inmate. The superintendent and deputy superintendent for security moved to dismiss claims that they were deliberately indifferent to the inmate's personal safety. The district court denied the motion. The court held that the inmate's allegations against the superintendent and deputy superintendent for security, claiming that they were deliberately indifferent to her rights and were responsible for creating or maintaining policies or practices that failed to prevent her from being repeatedly raped and assaulted by a corrections officer, stated a claim for Eighth and Fourteenth Amendment violations. The court noted that the complaint alleged that the officials were responsible for determining where inmates were to be housed and the assignment of guards, and in conjunction with another official, investigation and response to complaints of staff misconduct. The court found that the superintendent and deputy superintendent for security were not entitled to qualified immunity, given the extent of the alleged sexual abuse, the numerous warning signs alleged, and the number of questionable, if not unintelligible, decisions made with respect to the inmate during the course of an investigation. (Taconic Correctional Facility, New York)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Sexton v. Kenton County Detention Center, 702 F.Supp.2d 784 (E.D.Ky. 2010). Two female detainees brought a § 1983 action against a county detention center and officials, alleging deliberate indifference with respect to hiring and supervision of a deputy who sexually assaulted them while they awaited arraignment. The defendants moved for summary judgment. The district court granted the motion. The court held that the detainees failed to establish deliberate indifference with respect to the center's hiring of the deputy. The court noted that none of the deputy's prior misdemeanor offenses, including his driving infractions and domestic assault, demonstrated a propensity to commit rape. The court found that the detainees failed to demonstrate a causal link between the center's alleged policy of not terminating employees with excessive absenteeism and the deputy's conduct. The court noted that "...Absent evidence of prior complaints of sexual assault, the mere fact that a male guard supervises a female inmate does not lead to the conclusion that the inmate is at a great risk of being sexually assaulted by the guard." According to the court, the detainees failed to establish that the county detention center was deliberately indifferent to their constitutional rights by not effectively monitoring surveillance equipment, and thus they could not recover in their § 1983 action against the center, where there was no evidence that the center had a policy or custom of ineffective surveillance. The detainees argued that only one person monitored the 89 cameras that were used throughout the Detention Center and that they were mainly monitored only for ingress and egress of secured doors. They asserted that the county should have had cameras in the video arraignment room for the inmates' protection. The court noted that state jail regulations do not require constant monitoring of video surveillance cameras or dictate where the cameras are to be placed inside a detention facility. (Kenton County Detention Center, Kentucky)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE

Smith v. County of Lenawee, 600 F.3d 686 (6th Cir. 2010). A female detainee's estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee's death while in the county's custody. The district court denied the parole agent's motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent's failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the "proximate cause" of the detainee's death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee's condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff's Department, and Michigan Department of Corrections)

U.S. Appeals Court
PREGNANCY

Townsend v. Jefferson County, 601 F.3d 1152 (11th Cir. 2010). A detainee who suffered a miscarriage at a county jail brought a civil rights action against the county, county sheriff, two deputies, and the nurse who had examined her. The district court denied the deputies' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court reversed and rendered. The court held that the injury suffered by the pregnant detainee who used crack cocaine daily and had a miscarriage at the county jail was not caused by any deliberate indifference to his serious medical needs by the deputies, in violation of due process. According to the court, the deputies knew that the detainee had spoken with a nurse at the jail who determined that the detainee's condition was not an emergency, and there was no evidence that the detainee's situation was so obviously dire that the deputies must have known that the nurse had grossly misjudged her condition. (Birmingham Jail, Jefferson County, Alabama)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Ulibarri v. City & County of Denver, 742 F.Supp.2d 1192 (D.Colo. 2010). Deaf detainees, and the estate of one detainee who committed suicide, brought a civil rights action challenging their arrests and detentions by the members of city and county's police and sheriff departments. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that failure to provide a deaf detainee with a sign language interpreter during the intake process did not constitute disability discrimination. The court found that jail deputies were not deliberately indifferent to a deaf detainee's needs. But the court held that summary judgment was precluded by genuine issues of material fact as to whether the deaf detainee had access to the jail's services after he was booked and placed in his housing assignment to the same extent as inmates who could communicate verbally, and whether the detainee could access the jail's services without assistance.

The court held that jail deputies were not deliberately indifferent to needs of a deaf detainee who committed suicide, and because there was no underlying Eighth Amendment violation, supervisor defendants were not

liable in either their official or individual capacities for the detainee's suicide, and the municipality was not liable for failure to adequately train and supervise the deputies. The court noted that no evidence indicated that the detainee had been suicidal prior to his incarceration or at the time of his medical screening, but rather, evidence established that the detainee could communicate through writing and otherwise sufficiently to at least alert medical staff that he needed assistance. The court noted that medical staff made regular and frequent visits to the jail. But the court also held that summary judgment was precluded by genuine issues of material fact existed as to whether the sheriff's department breached a duty to the detainee to take reasonable care to prevent the detainee from committing suicide, and whether any such breach proximately caused the detainee's suicide.

The court held that jail officials' late night release of the deaf detainee and the potential harm from being unable to communicate or get herself home did not demonstrate the level of outrageousness required to establish a substantive due process violation under a state-created danger theory. According to the court, the detainee failed to show that officers would have been aware of the risk that, instead of waiting in the facility for public transportation to begin, the detainee would leave and accept a ride from a stranger. The detainee was released at 2:00 a.m. and she was given bus tokens by a deputy sheriff. Her husband had called the facility to say that he was on his way to pick her up, but the message was not relayed to the detainee. There was a waiting area in the lobby of the facility but she did not notice it and attempted to get herself home on her own. (City and County of Denver Police and Sheriff Departments, Pre-arraignment Detention Facility, Denver County Jail, Colorado)

U.S. Appeals Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Whitson v. Stone County Jail, 602 F.3d 920 (8th Cir. 2010). A female prisoner initiated a pro se § 1983 suit, alleging that two officers failed to protect her from a sexual assault by a male prisoner, and that others failed to properly train and supervise the officers responsible for her safety. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by a fact issue as to whether the officers were deliberately indifferent to the safety of the female prisoner who was placed in the back of a dark van for transport with two male inmates and allegedly raped by one of them. (Stone County Jail, Missouri)

2011

U.S. Appeals Court
SEXUAL HARASS-
MENT

Amador v. Andrews, 655 F.3d 89 (2nd Cir. 2011). Current and former female inmates filed a class action § 1983 suit against several line officers employed at seven state prisons and various supervisors and other corrections officials, claiming that they were sexually abused and harassed by the line officers and that the supervisory defendants contributed to this abuse and harassment through the maintenance of inadequate policies and practices. The district court dismissed, and the inmates appealed. The appeals court dismissed in part, and vacated and remanded in part. The court held that the female inmates who made internal complaints, investigated by an Inspector General (IG), that sought redress only for the alleged actions of a particular corrections officer and did not seek a change in policies or procedures, failed to exhaust their internal remedies, as required by the Prison Litigation Reform Act (PLRA) to proceed in federal court on § 1983 claims of sexual abuse and harassment. But the court found that the female inmates' claim of a failure to protect was sufficient exhaustion with regard to a § 1983 class action litigation seeking systemic relief from alleged sexual abuse and harassment. (New York Department of Correctional Services)

U.S. District Court
SEXUAL HARASS-
MENT

Banker v. County of Livingston, 782 F.Supp.2d 39 (W.D.N.Y. 2011.) A female patient brought an action against a county and the company that provided court-ordered alcohol treatment and counseling services, alleging she was sexually abused by a counselor while undergoing treatment and counseling. The defendants moved to dismiss and the district court granted the motions. The court held that the plaintiff's allegation that she was required to make unescorted visits to a male area of the jail in order to receive alcohol abuse medication that was mandated as a condition of probation, did not state a claim of a constitutional magnitude as would give rise to the county's municipal liability under § 1983. According to the court, the county's alleged requirement that the plaintiff walk unescorted through portions of the male population jail to receive her medication was not so outrageous as could give rise to the county's liability for negligent infliction of emotional distress (NIED) under New York law, where nothing indicated that the plaintiff's physical safety was threatened. (Livingston County Council on Alcohol and Substance Abuse, Livingston County Jail, New York)

U.S. Appeals Court
GID- Gender Identify
Disorder
MEDICAL CARE
TRANSEXUAL

Battista v. Clarke, 645 F.3d 449 (1st Cir. 2011). A Massachusetts civil detainee, who was anatomically male but suffered from gender identity disorder (GID), brought an action against Massachusetts officials alleging "deliberate indifference" to her medical needs, and seeking an injunction requiring that hormone therapy and female garb and accessories be provided to her. The district court granted preliminary injunctive relief, and the state officials appealed. The appeals court affirmed. The appeals court held that the record supported the district court's conclusion that Massachusetts officials were deliberately indifferent to the medical needs of the civil detainee or exercised an unreasonable professional judgment by denying her female hormone therapy. The court noted that it had been fifteen years since the detainee first asked for treatment, and for ten years, health professionals had been recommending hormone therapy as a necessary part of the treatment. According to the court, when, during the delay, the detainee sought to castrate herself with a razor blade, state officials could be said to have known that the detainee was at a "substantial risk of serious harm." (Massachusetts Treatment Center for Sexually Dangerous Persons)

U.S. Appeals Court
SEXUAL ASSAULT

Cash v. County of Erie, 654 F.3d 324 (2nd Cir. 2011). A pretrial detainee filed a § 1983 action against a county, sheriff, and deputy sheriff alleging that the deputy sexually assaulted her. After entry of a jury verdict in the detainee's favor, the district court granted the defendants' motion for judgment notwithstanding the verdict. The parties filed cross-appeals. The appeals court reversed and remanded. The appeals court held that there was sufficient evidence to support the jury's finding that the sheriff was deliberately indifferent to the risk of sexual misconduct, and the jury's determination that the county was subject to municipal liability was not

irreconcilably inconsistent with its finding that the sheriff was not negligent. According to the court, trial evidence revealed that the detainee was housed in a female housing unit at the facility, that the deputy, acting alone, escorted some female detainees to the recreation center but ordered the plaintiff to remain behind. When the deputy returned, he grabbed the plaintiff, put his hands over her nose and mouth, forced her into the deputies' bathroom, and raped her. The plaintiff reported the assault the next morning, prompting an investigation that led to the deputy's arrest for first-degree rape. (Erie County Holding Center, New York)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Chao v. Ballista, 772 F.Supp.2d 337 (D.Mass. 2011). A former inmate brought an action under § 1983 and the Massachusetts Civil Rights Act (MCRA) against a prison guard and officials, alleging that the guard violated her constitutional rights by sexually exploiting her while she was incarcerated, and that the officials failed to protect her from the guard's repeated sexual battery. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether repeated sexual encounters between the male prison guard and the female inmate were consensual, as to whether the psychological and physical harm suffered by the inmate was objectively, sufficiently serious, and as to whether the guard was recklessly indifferent to the inmate's health, safety, and her right to be free from sexual harassment and abuse. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials were actually aware of the conditions giving rise to the risk of serious harm to the female inmate, namely, the male guard's sexual misconduct, and as to whether the officials disregarded that risk. (South Middlesex Corr'l Center, Framingham, Massachusetts)

U.S. District Court
SEXUAL ASSAULT

Chao v. Ballista, 806 F.Supp.2d 358 (D.Mass. 2011). A female former inmate brought an action under § 1983 and the Massachusetts Civil Rights Act (MCRA) against a prison guard and superintendent, alleging that the guard violated her constitutional rights by sexually exploiting her while she was incarcerated, and that the superintendent failed to protect her from the guard's repeated sexual battery. Following a jury trial, the district court entered judgment in the inmate's favor. The defendants subsequently moved for judgment as matter of law or for a new trial. The district court denied the motions. The court held that the question of whether the prison guard's misconduct in sexually exploiting the inmate while she was incarcerated rose to the level of "sufficiently serious harm" necessary to establish an Eighth Amendment violation, was for the jury. The court also found that the issue of whether the prison guard and superintendent were deliberately indifferent to the rights, health, or safety of the inmate was for the jury. The court found that the jury verdict finding that the prison superintendent was not liable for punitive damages because the superintendent's conduct was not "willful, wonton, or malicious," was not inconsistent with the verdict finding that the superintendent was "sufficiently culpable" as to have been deliberately indifferent to the inmate's needs, in violation of the Eighth Amendment. The court noted that malicious conduct is not required to sustain an Eighth Amendment claim for supervisory liability for deliberate indifference. According to the court, issues of whether the prison guard knew, or should have known, that emotional distress would result from his sexually exploiting the inmate while she was incarcerated, and as to whether the guard's conduct, including demanding fellatio in 23 separate places with the inmate, was extreme and outrageous, were for the jury. The court found that the superintendent was not entitled to qualified immunity from the former inmate's § 1983 claim alleging that the superintendent failed to protect her from the prison guard's repeated sexual exploitation, in violation of the Eighth Amendment, where the law was clearly established that prison officials had a duty to protect their inmates by training and supervising guards, creating and sustaining a safe prison environment, and investigating allegations of sexual misconduct or abuse when they arose. (South Middlesex Correctional Center, Massachusetts)

U.S. Appeals Court
MEDICAL CARE

Cobige v. City of Chicago, Ill., 651 F.3d 780 (7th Cir. 2011). The estate of a deceased female arrestee brought a § 1983 action against a city and police officers, alleging failure to provide medical care in violation of the Fourth Amendment and the Illinois wrongful death law. After a jury verdict in favor of the estate, the city and officers filed motions for judgment as a matter of law and/or for a new trial. The district court denied the motions. The city and officers appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that evidence presented at trial in the estate's § 1983 action was sufficient to establish causation of the arrestee's death, where evidence from one of the arrestee's cellmates, two deputy sheriffs and a civilian aide at the lockup, permitted a jury to find that she experienced severe abdominal pain throughout her confinement. A professor and head of coronary care at university hospitals testified that the pain led the arrestee to produce more epinephrine, which combined with a pre-existing heart condition caused her death, and uterine tumors found during a post-mortem examination led to his conclusion that the arrestee had suffered serious abdominal pain. The court held that the probative value of evidence of the deceased arrestee's police record, time in prison, and drug addiction outweighed the danger of unfair prejudice, where the evidence bore directly on the appropriate amount of damages and that a new trial on the issue of damages was warranted. (Chicago Police Department lockup, Illinois)

U.S. Appeals Court
GID- Gender Identify
Disorder
MEDICAL CARE
TRANSSEXUAL

Fields v. Smith, 653 F.3d 550 (7th Cir. 2011). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The district court granted judgment on behalf of the plaintiffs and the defendants appealed. The appeals court affirmed. The appeals court held that: (1) enforcement of the statute constituted deliberate indifference to the inmates' serious medical needs; (2) the statute facially violated the Eighth Amendment; (3) deference to prison administrators in implementing the ban was not warranted; and (4) the district court did not abuse its discretion in enjoining the entirety of the Wisconsin Inmate Sex Change Prevention Act. (Wisconsin Department of Corrections)

U.S. District Court
SEARCHES

Johnson v. Government of Dist. of Columbia, 780 F.Supp.2d 62 (D.D.C. 2011). Female arrestees, who were arrested for non-drug and non-violent offenses, brought an action against the District of Columbia and a former United States Marshal for the Superior Court, among others, alleging that the defendants' blanket policy of subjecting them to "drop, squat, and cough" strip searches before presentation to a judicial official violated their rights to be free from unreasonable searches under the Fourth Amendment, and their rights to equal protection under the Fifth Amendment. The marshal moved for summary judgment. The court granted the motion in part and denied in part. The court held that the Marshal was entitled to qualified immunity from the Fourth Amendment claim and that there was no evidence that the Marshal implemented a policy that directed the blanket practice of strip searching female arrestees, as would support a Fifth Amendment claim, nor that the Marshal knew of a blanket practice of strip searching female arrestees. The court noted that the law at the time of the searches did not clearly establish that strip searching female arrestees prior to presentation to a judicial official violated the Fourth Amendment. (U. S. Marshal for the Superior Court of the District of Columbia)

U.S. Appeals Court
CLOTHING

Khatib v. County of Orange, 639 F.3d 898 (9th Cir. 2011). A former detainee sued a county for allegedly violating the Religious Land Use and Institutionalized Persons Act (RLUIPA) by requiring her to remove her headscarf, in public, against her Muslim religious beliefs and practice, while she was held on two occasions in a county courthouse holding facility pending disposition of her probation violation. The district court granted the county's motion to dismiss for failure to state a claim and the detainee appealed. The appeals court reversed and remanded, finding that the holding facility was an "institution" under RLUIPA. According to the court, the county courthouse holding facility was a "pretrial detention facility," and thus was an "institution" under RLUIPA, where the facility's main purpose was to temporarily hold individuals who were awaiting court proceedings, including individuals awaiting trial. The court noted that although the facility housed inmates for relatively short periods, it held up to 600 inmates a day, and was described by the county as a secure detention facility for the confinement of persons making a court appearance. According to the court, the short-term detainee was not required to satisfy PLRA's exhaustion requirements before suing for the county's alleged violation of RLUIPA in failing to accommodate her religious beliefs. (Orange Co. Santa Ana Courthouse, Calif.)

U.S. Appeals Court
MEDICAL CARE

Ortiz v. City of Chicago, 656 F.3d 523 (7th Cir. 2011). A female arrestee's estate brought a civil rights action against a city and a number of its police officers, alleging claims arising out of the arrestee's denial of medical care and death during detention. The district court barred the proposed testimony of the estate's medical expert, and granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether it was objectively unreasonable for police officers to take no action to seek medical care for the arrestee, and as to whether the arrestee would not have died or experienced pain and suffering prior to her death had the police officers taken her to a hospital. The court held that remand was required for the district court to determine whether the medical expert's testimony that, assuming the arrestee died of a heroin overdose, she would have suffered less if she had been taken to the hospital, would help a jury understand whether the police officers' failure to take the arrestee to the hospital exacerbated her injury. According to the court, the police officers were not entitled to qualified immunity where it was clearly established at the time of arrestee's death that the Fourth Amendment protected a person's rights until she had had a probable cause hearing, and that providing no medical care in the face of a serious health risk was deliberate indifference. (Chicago Police Department 23rd District Lockup, Illinois)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Pauls v. Green, 816 F.Supp.2d 961 (D.Idaho 2011). A female pretrial detainee brought an action against a county, county officials, and a jail guard, alleging that she was coerced into having inappropriate sexual contact with the guard. The defendants moved to dismiss and for summary judgment, and the plaintiff moved to compel discovery and for sanctions. The district court granted the motions, in part. The court held that the detainee was not required to file grievances after being transferred to a state prison before filing her § 1983 action, in order to satisfy the administrative exhaustion requirement under the Prison Litigation Reform Act (PLRA). The court noted that the county jail grievance procedures were not available to detainees after they transferred, and the county did not offer any assistance to the detainee after learning of the alleged assaults.

The court found that neither the county nor the county sheriff was deliberately indifferent in failing to train or supervise county jail guards to not sexually assault jail detainees, and thus, the female detainee could not demonstrate that the county or sheriff was liable under § 1983. According to the court, the guards did not need specific training to know that they should refrain from sexually assaulting detainees, and there was no showing that the general training program for guards was deficient or that there was a pattern of prior abuses at county jail. The court held that the summary judgment affidavit of the pretrial detainee's expert, containing the opinion that county officials exhibited deliberate indifference to the rights and safety of jail detainees in training or supervising jail staff, and that sexual improprieties on the part of staff were easily accomplished and rarely punished, was insufficient to avoid summary judgment, where the affidavit was conclusory, and without factual predicate. The court found that the detainee was entitled to the sanction of an adverse jury instruction against the county for the destruction of recordings of interviews conducted by police during the investigation of the county jail guard's contact with the detainee. (Adams County Jail, Idaho)

U.S. District Court
SEARCHES

Ratray v. Woodbury County, Iowa, 788 F.Supp.2d 839 (N.D.Iowa 2011). A detainee sued a county, claiming that her civil rights were violated by a strip search conducted by jail employees. Following a jury verdict awarding substantial damages, the county moved for a new trial or for a reduction of the jury's award. The court granted the motion. The court held that a new trial was warranted because it was impossible to determine why the jury, in its first verdict, awarded \$5,000 for past emotional distress, and then a few minutes later awarded her \$250,000 for past emotional distress in a second verdict. The court noted that, after the jury learned it could not award \$250,000 in nominal damages, it drastically increased its initial award of \$5,000 for past emotional distress to \$250,000 in the second verdict, and while the jury may have intended the \$250,000

award as punitive damages, such damages were not pled, and the jury had been instructed that such damages could not be awarded. (Woodbury County Jail, Iowa)

U.S. District Court
MEDICAL CARE
PREGNANCY

Shultz v. Allegheny County, 835 F.Supp.2d 14 (W.D.Pa. 2011). The administratrix of the estate of an inmate who died after developing bacterial pneumonia while pregnant brought a § 1983 action against a county, jail health services, and various officials and employees of county jail, alleging they ignored her serious medical problems. The county and official filed a motion to dismiss. The district court denied the motion. The court held that allegations that the inmate had complained of symptoms involving her breathing and lungs to jail personnel but was told to “stick it out,” that she feared impending death and communicated that to officials and her mother, that her condition progressed to the point where she had difficulty breathing and had discharge from her lungs, that she was taken to the infirmary with additional symptoms including nausea and vomiting, which had been present for several days, that she was treated for influenza without taking cultures or other testing, that there was no outbreak of the flu within the jail, that her condition did not improve, that she continued to complain of difficulty breathing and lung discharge, that she was taken to a medical facility intensive care unit, and that tests were performed there but her condition had already progressed to the point where it was fatal were sufficient to plead deliberate indifference to her serious medical need. The court found that allegations that her condition could have been easily controlled and cured with testing were sufficient to plead a cost-cutting/saving custom or policy existed and was the moving force in the inmate’s death, as required for the § 1983 action. (Allegheny Correctional Health Services Inc., Allegheny County Jail, Pennsylvania)

U.S. District Court
MEDICAL CARE
PREGNANCY

Webb v. Jessamine County Fiscal Court, 802 F.Supp.2d 870 (E.D.Ky. 2011). An inmate brought a § 1983 action against a county fiscal court, a judge, detention center, and jailers, alleging that the defendants were deliberately indifferent to his serious medical needs, resulting in her being forced to endure labor unassisted by medical personnel and to give birth to her child in a holdover cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pregnant inmate had a “serious medical need” during the overnight hours in which she, at the end of her pregnancy term, experienced readily recognizable symptoms of labor, and as to whether the county jailer who communicated with the inmate on the night in question, and who was purportedly a certified nursing assistant (CNA), perceived the facts necessary to draw the inference that a serious medical condition existed and then disregarded that condition. According to the court, the fact that the inmate gave birth to a healthy baby in a holdover cell following a normal and, by all appearances, unremarkable course of labor and delivery, went to the amount of damages to be awarded in the inmate’s § 1983 action against the county defendants, but did not change the fact that the type of injury the inmate allegedly suffered was cognizable under the 8th Amendment. (Jessamine County Det. Center, Kentucky)

2012

U.S. District Court
GID- Gender Identity
Disorder
MEDICAL CARE

Alexander v. Weiner, 841 F.Supp.2d 486 (D.Mass. 2012). An inmate, who was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), brought an action against prison medical staff, alleging violations of the Eighth and Fourteenth Amendments for failing to provide adequate medical treatment for her GID. The district court denied the defendants’ motion to dismiss. The court held that allegations by the inmate that she was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), that laser hair removal or electrolysis was part of her treatment prescribed by doctors under contract with the prison, and that she was denied this medical care were sufficient to plead that her serious medical need was not adequately treated in violation of the Eighth Amendment. The court also held that allegations that she was denied this care on at least three separate occasions, despite a long history of administrative appeals and requests for doctors’ orders to be followed, were sufficient to plead deliberate indifference by prison officials in violation of the Eighth Amendment. According to the court, allegations that the associate medical director at the prison had direct responsibility for administering medical care ordered by physicians, and that the director failed to permit the inmate to receive her prescribed treatment, were sufficient to plead personal involvement by the director in deliberate indifference to serious medical needs, as required for the inmate’s § 1983 claim alleging violations of the Eighth Amendment. The court also found that the assistant deputy commissioner for clinical services at the prison was aware of the inmate’s prescribed course of treatment, that the inmate was denied treatments, and that the commissioner responded to filed grievances by claiming the grievances were resolved and then telling the inmate to address her concerns with primary care providers, were sufficient to plead the commissioner’s personal involvement in deliberate indifference to her serious medical needs. (Massachusetts Dept. of Correction)

U.S. District Court
SEXUAL ASSAULT

Ard v. Rushing, 911 F.Supp.2d 425 (S.D.Miss. 2012). A female inmate brought an action against a sheriff and a deputy asserting claims under § 1983 and § 1985 for violation of the Fourth, Fifth and Eighth Amendments, and also alleging a state law claim for negligence, relating to an incident in which she was sexually assaulted by the deputy while she was incarcerated. The sheriff moved for summary judgment. The district court granted the motion. The court held that the sheriff was not deliberately indifferent to a substantial risk of harm to the female jail inmate as would have violated the Eighth Amendment, where the sheriff had established safeguards to ensure the safety of female prisoners, including a female-only, camera-monitored area in which female inmates were housed, a policy that male jailers could not enter the female-only area without a female jailer, and a policy that a female jailer was to cover each shift. The court noted that past allegations that the deputy had engaged in unwanted sexual contact with female inmates had been investigated and found not to be substantiated. The court found that the inmate failed to show that the sheriff had knowledge of the deputy’s disregard of the sheriff’s policy to ensure the safety of female prisoners, which included a requirement that male jailers could not enter the female-only area without a female jailer, or to show that the sheriff was deliberately indifferent to the need for more or different training, as required to establish an Eighth Amendment failure to train/supervise claim. (Lincoln County Jail, Mississippi)

U.S. District Court
SEARCHES
MEDICAL CARE

Choquette v. City of New York, 839 F.Supp.2d 692 (S.D.N.Y. 2012). Female detainees filed § 1983 actions against a city and city officials alleging that the policy, practice, and custom of the city department of correction (DOC) of subjecting female detainees to a forced gynecological examination upon admission to DOC custody violated their constitutional rights. The detainees alleged that they were not informed of what the exam entailed and were subjected to, or threatened with, punishment if they questioned or refused the exam. The defendants moved to dismiss. The district court denied the motion. The court held that the statute of limitations for the detainees' claims was tolled until the gynecological exam class claims were dismissed from the class action challenging the DOC's alleged practice of conducting strip searches, where the potential gynecological exam class was pleaded in both the original complaint and the first amended intervenor complaint, and the settlement agreement did not provide unequivocal notice that the gynecological exam class claims were not being pursued. (New York City Department of Correction, Rose M. Singer Center, Rikers Island)

U.S. District Court
CLASSIFICATION
MEDICAL CARE
PROGRAMMING
TRANSFER
WORK RELEASE

Henderson v. Thomas, 913 F.Supp.2d 1267 (M.D.Ala. 2012). Seven HIV-positive inmates brought an action on behalf of themselves and class of all current and future HIV-positive inmates incarcerated in Alabama Department of Corrections (ADOC) facilities, alleging that ADOC's HIV segregation policy discriminated against them on the basis of their disability, in violation of the Americans with Disabilities Act (ADA) and Rehabilitation Act. After a non-jury trial, the district court held that: (1) the class representatives had standing to sue; (2) the claims were not moot even though one inmate had been transferred, where it was reasonable to believe that the challenged practices would continue; (3) inmates housed in a special housing unit were "otherwise qualified," or reasonable accommodation would render them "otherwise qualified;" (4) the blanket policy of categorically segregating all HIV-positive inmates in a special housing unit violated ADA and the Rehabilitation Act; (5) housing HIV-positive inmates at other facilities would not impose an undue burden on the state; and (6) food-service policies that excluded HIV-positive inmates from kitchen jobs within prisons and prohibited HIV-positive inmates from holding food-service jobs in the work-release program irrationally excluded HIV-positive inmates from programs for which they were unquestionably qualified and therefore violated ADA and the Rehabilitation Act. The court also found that female HIV-positive class representative had standing to challenge ADOC policies that HIV-positive women were segregated within the prison from general-population prisoners and that women were allowed work-release housing at one facility, but not at ADOC's other work-release facility for women. The court held that modification of the ADOC medical classification system to afford HIV-positive inmates individualized determinations, instead of treating HIV status as a dispositive criterion regardless of viral load, history of high-risk behavior, physical and mental health, and any other individual aspects of inmates, was a reasonable accommodation to ensure that HIV-positive inmates housed in the prison's special housing unit were "otherwise qualified," under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, for integration into the general prison population. According to the court, requiring ADOC to dismantle its policy of segregating HIV-positive female inmates in a particular dormitory at a prison would neither impose undue financial and administrative burdens nor require fundamental alteration in the nature of ADOC's operations. The court suggested that it was almost certain that ADOC was wasting valuable resources by maintaining its segregation policy, in that a large space at a prison filled with empty beds was being used to house only a few women. (Alabama Department of Corrections)

U.S. Appeals Court
SEARCHES

Kendrick v. Pope, 671 F.3d 686 (8th Cir. 2012). A female state inmate brought a civil rights action against a corrections officer who allegedly confiscated religious items during a cell shakedown. The district court dismissed the inmate's claims and she appealed. The appeals court reversed and remanded, finding that genuine issues of material fact precluded summary judgment. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the corrections officer confiscated the inmate's Catholic Bible, rosary beads, and other religious materials during a cell shakedown, and subsequently failed to return those items. (McPherson Unit, Arkansas Department of Corrections)

U.S. District Court
MEDICAL CARE
SEARCHES

Manning v. Sweitzer, 891 F.Supp.2d 961 (N.D.Ill. 2012). An arrestee brought an action against various village police officers and a village alleging unreasonable search and seizure of her vehicle, denial of the right to counsel, cruel and unusual punishment, conspiracy under § 1985, failure to train, unlawful detention, and several state law claims. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee's allegation that she was offered medication for her unnamed mental ailment while incarcerated, but that she declined to accept the medication "for fear of overmedication or a harmful interaction," failed to establish that she was subjected to inhumane conditions or that the police were deliberately indifferent to a serious medical need, as required to support her claim that she was subjected to cruel and unusual punishment in violation of the Eighth Amendment and the Due Process Clause. According to the court, the arrestee's failure to allege any other incidents of wrongdoing by the village, combined with her failure to show that the unconstitutional consequences of the village's alleged failure to train its police officers were patently obvious, precluded her claim against the village. (Village of Park Forest Police Department, Illinois)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
PREGNANCY

Moulton v. DeSue, 966 F.Supp.2d 1298 (M.D.Fla. 2012). The personal representative of a jail inmate's estate brought a § 1983 action against correctional officers, a nurse, and a sheriff, alleging deliberate indifference to the inmate's right to adequate medical care while in pretrial confinement, which resulted in her death. The defendants filed motions for summary judgment. The district court denied the motions in part and granted the motions in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers' failure to call emergency rescue when the pregnant jail inmate complained of stomach cramps constituted more than grossly negligent disregard of a substantial risk of a serious harm, precluding summary judgment for the officers on the deliberate indifference to the inmate's serious medical need claim. According to the court, correctional officers were on notice that their alleged actions or inactions violated the jail inmate's clearly established Fourteenth Amendment right to adequate medical care, and, thus,

the officers were not entitled to qualified immunity in § 1983 action. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers acted with ill will or malice toward the jail inmate, or exhibited reckless indifference. (Bradford County Jail, Florida)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognition bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department)

U.S. Appeals Court
MEDICAL CARE
SUICIDE

Shelton v. Arkansas Dept. of Human Services, 677 F.3d 837 (8th Cir. 2012). The administratrix of the estate of a mental health patient brought an action against various public officials and health professionals, alleging shortcomings in the way the medical professionals responded after the patient hanged herself while a patient at the facility. The district court dismissed the action. The administratrix appealed. The appeals court affirmed. The court held that the state actors' discovery of an unconscious voluntary mental health patient hanged in her room did not trigger duties related to involuntary commitment nor did it give rise to a constitutional-level duty of care. According to the court, after the state actors discovered the patient, she was no different than any unconscious patient in an emergency room, operating room, or ambulance controlled by the state actors, and, in such circumstances, the state actors owed patients state-law duties of care based upon standards for simple or professional negligence. The court found that the physician's decision to remove the mental health patient from a suicide watch was a medical-treatment decision, and therefore a claim based on that decision could not be brought pursuant to either the Americans with Disabilities Act (ADA) or the Rehabilitation Act, absent any allegation that the removal from suicide watch was influenced by anything other than the physician's judgment. (Arkansas State Hospital)

U.S. District Court
GID- Gender Identity
Disorder
MEDICAL CARE
TRANSEXUAL

Soneeya v. Spencer, 851 F.Supp.2d 228 (D.Mass. 2012). A state prisoner, a male-to-female transsexual, brought an action against the Commissioner of the Massachusetts Department of Correction (DOC), alleging violations of her Eighth Amendment rights. Following a bench trial, the district court held that the prisoner's gender identity disorder (GID) was a serious medical need and the treatment received by the prisoner was not adequate. The court found that the Commissioner was deliberately indifferent to the prisoner's serious medical need and the DOC's pattern of obstruction and delay was likely to continue, as required for the prisoner to obtain injunctive relief on her Eighth Amendment claim, where the DOC's policy for treating GID imposed a blanket prohibition on cosmetic and sex reassignment surgery without exception. The court noted that the transsexual prisoner's gender identity disorder was a "serious medical need" within the meaning of the Eighth Amendment, the prisoner's GID was diagnosed by a physician as needing treatment, and she had a history of suicide attempts and self castration while in custody. The court found that the treatment received by the transsexual prisoner was not adequate, although the DOC provided the prisoner with psychotherapy and hormone treatment, it failed to perform an individual medical evaluation aimed solely at determining appropriate treatment for her GID as a result of its blanket prohibition on cosmetic and sex reassignment surgery. (MCI-Shirley, Massachusetts)

U.S. District Court
ACCESS TO COURT
SEXUAL HARASSMENT

Vogelfang v. Capra, 889 F.Supp.2d 489 (S.D.N.Y. 2012). A female state inmate filed a pro se § 1983 action against a prison's correction officers, officials, and medical staff, asserting 25 claims contesting the conditions of her confinement and the conduct of the staff. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated due process claims based on insufficient notice of a disciplinary hearing and on the inmate's allegedly improper removal from a disciplinary hearing. According to the court, the pro se state inmate's allegations that she was denied access to a computer failed to state a claim against prison officials for due process violations absent allegations that such denial constituted an atypical and significant hardship to her. Although the inmate claimed that it was impossible for her to perform legal work because courts no longer accepted hand-written documents, the court did not prohibit hand-written documents and had accepted them on prior motions in the inmate's case. The court held that the

inmate stated a First Amendment retaliation claim under § 1983 against a male prison correction officer by alleging that the officer had written a false inmate misbehavior report (IMR) against her three days after she had filed a grievance against him for performing a degrading sexual act in front of her, and that because of the false report she had been forced to spend three months in the prison's special housing unit (SHU). (Bedford Hills Correctional Facility, New York)

U.S. District Court
EQUAL PROTECTION
HYGIENE
MEDICAL CARE

Wilkins-Jones v. County of Alameda, 859 F.Supp.2d 1039 (N.D.Cal. 2012). A detainee at a county jail who had limited mobility and deformed hands as a result of systemic lupus and rheumatoid arthritis brought an action against the contractor that provided medical care assessment services for detainees, and its employees, alleging violations of Title II of the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), and the California Unruh Civil Rights Act. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the private contractor was not liable as a public entity or instrumentality under the ADA; (2) the contractor qualified as a "business establishment," under the California Unruh Civil Rights Act; (3) the complaint properly asserted a deprivation of full and equal accommodations, as required to state a claim under the California Unruh Civil Rights Act; (4) the allegations were insufficient to assert intentional discrimination, as required to state a claim against the contractor for violation of the California Unruh Civil Rights Act; (5) the CDPA applied to county jails and the accommodations and services provided therein; and (6) the allegations stated a claim against contractor under the CDPA. The jail inmate who had limited mobility and deformed hands alleged that she was unable to use the toilet in the jail as needed, causing her injuries, and that she was deprived of access to jail's facilities, beds, showers, walkways, and benches. According to the court, this properly asserted a deprivation of full and equal accommodations, as required to state a claim against the private contractor that contracted with county to provide medical care assessment services for the county jail. (County of Alameda, California)

2013

U.S. Appeals Court
EQUAL PROTECTION
FAILURE TO PROTECT
MEDICAL CARE
SUICIDE

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment--namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish.

The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal.

According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. District Court
MEDICAL CARE
SUICIDE

Chennault v. Mitchell, 923 F.Supp.2d 765 (E.D.Va. 2013). The guardian for an incapacitated former pretrial detainee filed § 1983 action against a former sheriff and former officers of the sheriff's department for alleged violation of the detainee's Fourteenth Amendment right to due process, by deliberate indifference to her medical needs that resulted in her permanent brain damage from an attempted suicide. The defendants moved to dismiss. The district court granted the motion. The court held that sheriff's department officers were not deliberately indifferent to the serious medical needs of the detainee, as required to support the detainee's § 1983 claim for violation of her Fourteenth Amendment due process rights, where the officers had no knowledge or even any reason to suspect that the detainee presented a risk of suicide, rather than merely a risk of violent behavior towards officers. According to the court, the sheriff's department officers' pepper spraying of the detainee due to her violent behavior toward the officers, and then failing to decontaminate her, did not establish that the officers knew of and disregarded a substantial risk of harm to the detainee, where the officers did not know or have reason to believe that the detainee was suicidal at the time that she was sprayed, the detainee did not allege that the use of spray was unnecessary or excessive in amount, and the detainee did not exhibit any adverse reactions to the spray or to the lack of decontamination. The court found that the sheriff's department officers' failure to support the detainee's body and/or neck when they cut her shirt on which she hung herself on cell bars in an attempted suicide did not constitute deliberate indifference to her serious medical needs in violation of her Fourteenth Amendment due process rights. The court noted that, even though the detainee's injuries were increased from sliding down cell bars and forcibly striking her head on the cell door, the officers

faced an emergency and needed to act quickly and decisively to save the detainee's life. According to the court, their actions "... were not only reasonable in this situation, but laudable." The court held that the detainee's § 1983 claim that the sheriff failed to train jail personnel, to ensure they could adequately respond to the medical needs of combative and/or intoxicated detainees, was foreclosed by the lack of a Fourteenth Amendment violation by jail personnel and a lack of a causal link between the sheriff's policies and the detainee's attempted suicide, where jail personnel were not deliberately indifferent to the detainee's medical needs in violation of the detainee's due process rights, and there was no pattern of unconstitutional violations resulting in suicides or attempted suicides. (Richmond City Jail Annex, Virginia)

U.S. District Court
CLOTHING
PRIVACY
SEARCHES

Clay v. Woodbury County, Iowa, 982 F.Supp.2d 904 (N.D.Iowa 2013). A female arrestee brought a § 1983 action against a city, an arresting officer, county, county sheriff, and jail officers, alleging, among other things, that jail officers "strip searched" her without reasonable suspicion and in unconstitutional manner, and did so in retaliation for her vociferous complaints about her detention and the search of her purse and cell phone. The defendants moved for summary judgment, and the arrestee moved to exclude expert testimony. The district court held that the expert's reference to an incorrect standard for the excessive force claim did not warrant excluding his opinions in their entirety, although portions of the expert's report were inadmissible.

The court found that the incident in which male and female county jail officers forcibly removed the female arrestee's under-wire bra and changed her into jail attire was not a "strip search" within the meaning of the Iowa law which defined a "strip search" as "having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, female breasts or undergarments of that person or a physical probe by any body cavity," where there was no indication that the officers inspected the arrestee's private parts or physically probed any of her body cavities. The court also found that the arrestee whose clothing was forcibly removed in the presence of male and female county jail officers in a holding cell after the arrestee refused to answer questions during the booking process and to remove her clothing herself, was not subjected to a "strip search" requiring reasonable suspicion under the Fourth Amendment. According to the court, the officers did not violate the arrestee's privacy rights under the Fourth Amendment where the officers' reason for removing the arrestee's bra-- institutional safety-- was substantially justified, and the scope of the intrusion was relatively small. The court also found that the officers were entitled to qualified immunity from the female arrestee's § 1983 unlawful search claim, where the officers neither knew, nor reasonably should have known, that their actions would violate the arrestee's privacy rights.

The court held that summary judgment was precluded by genuine issues of material fact as to whether the amount of force used by female county jail officers during the booking process to forcibly remove the female arrestee's under-wire bra and change her into jail attire after the arrestee refused to answer questions, became disruptive, and refused to remove her clothing herself, was reasonable. The officers allegedly threw the arrestee onto the cell bunk, causing her to bang her head against the bunk or cell wall. The court found that male county jail officers did not use excessive force, within the meaning of the Fourth Amendment, in restraining the female arrestee in a holding cell after the female officers had allegedly thrown the arrestee onto a cell bunk, causing her to bang her head against bunk or cell wall, in an effort to forcibly remove the arrestee's clothing and to change her into jail attire. (Woodbury County Jail, Iowa)

U.S. District Court
MEDICAL CARE
PREGNANCY

Cooper v. Rogers, 968 F.Supp.2d 1121 (M.D.Ala. 2013). A female state prisoner filed a § 1983 action against jail officials in Alabama court, alleging deliberate indifference to her serious medical needs in violation of the Eighth Amendment. After the action was removed to federal court, officials moved for summary judgment. The district court granted the motion. The court held: (1) officials were acting within scope of their discretionary authority when they denied the pregnant prisoner medical care, as required to invoke qualified immunity; (2) the prisoner's prolonged vaginal bleeding accompanied by pain was a serious medical need; (3) officials acted with deliberate indifference to the prisoner's serious medical needs; but (4) evidence was insufficient to establish that deliberate indifference to prisoner's serious medical needs caused her miscarriage. The court noted that officials were aware that the prisoner was pregnant and that she was experiencing vaginal bleeding and pain, the prisoner testified that she made almost daily verbal requests for medical attention, officials ignored her requests or responded by threatening to send her to a women's prison, and told her to keep the baby inside of her. (Bullock County Jail, Alabama)

U.S. Appeals Court
GID- Gender Identity
Disorder

De'lonta v. Johnson, 708 F.3d 520 (4th Cir. 2013). A pre-operative transsexual inmate filed a § 1983 action alleging that state prison officials' continued denial of consideration for sex reassignment surgery as treatment for her gender identity disorder (GID) constituted deliberate indifference to her serious medical need in violation of the Eighth Amendment. The district court dismissed the complaint, and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegation was sufficient to state a plausible Eighth Amendment claim against the officials, even though the officials had provided the inmate with hormone treatment and mental health consultations, and had allowed her to live and dress as a woman, where the standard protocol for treatment of GID indicated that sex reassignment surgery might be necessary for individuals who continued to present with severe GID after one year of hormone therapy and dressing as woman. The court noted that the officials failed to evaluate the inmate concerning her suitability for surgery, despite her repeated complaints as to the persistence of her symptoms and the inefficacy of her existing treatment. (Powhatan Correctional Center, and Buckingham Correctional Center, Virginia Department of Corrections)

U.S. Appeals Court
SEXUAL ASSAULT
FAILURE TO PROTECT

Franklin v. Curry, 738 F.3d 1246 (11th Cir. 2013). A female pretrial detainee brought an action under § 1983 against a corrections officer and various other officers at a jail after she had been sexually assaulted. The district court denied the supervisory defendants' motion to dismiss and they appealed. The appeals court reversed, finding that the detainee had to allege that the supervisory officers actually knew of a serious risk that the offending officer posed, and that her complaint was insufficient to state a plausible claim that each supervisory officer should have known of a substantial risk that the offending officer would sexually assault her. (Shelby County Jail, Florida)

U.S. Appeals Court
SEXUAL ASSAULT

Graham v. Sheriff of Logan County, 741 F.3d 1118 (10th Cir. 2013). A sentenced female county jail prisoner brought a § 1983 action against the county and others, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment in connection with two guards' conduct of having sexual intercourse with her. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that the county jail prisoner consented to engaging in sexual intercourse with the two officers, and thus, the officers' conduct could not support the prisoner's § 1983 Eighth Amendment excessive force claim. The court noted that the prisoner admitted to talking to one officer about her sexual fantasies and that she asked to have sex with him. She also admitted to allowing another officer to look at her naked, she did nothing to indicate her lack of consent when the two officers entered her cell, when they removed her clothing, or when they touched her. According to the court, there was no showing that the prisoner's mental health issues negated her ability to consent or that the officers had any knowledge of the prisoner's mental health issues. The officers had confessed and were fired immediately. (Logan County Jail, Oklahoma)

U.S. District Court
MEDICAL CARE

Hahn v. Walsh, 915 F.Supp.2d 925 (C.D.Ill. 2013). The estate of a diabetic pretrial detainee brought an action against a city, police officers, a county, the county sheriff, and a jail medical provider, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's serious medical needs. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that a city police officer at the scene of the arrest who had no involvement with the diabetic detainee could not be held liable under § 1983 for being deliberately indifferent to the serious medical needs of detainee, who died from diabetic ketoacidosis after she was taken to a county jail. The court also found that city police officers who transported the detainee to the county jail, rather than a hospital, were not deliberately indifferent to the serious medical needs of the detainee, where the officers were entitled to defer to the judgment of the paramedics on the scene. According to the court, there was no evidence that the county sheriff knew of a serious risk to the health of the diabetic pretrial detainee and consciously disregarded that risk, that any prior deaths at the jail involved medical care provided to an inmate, much less that medical care involved an inmate with diabetes, or that the sheriff's decisions about certification of the jail's medical contractor had any adverse effect on the detainee, as would subject the sheriff to liability under § 1983, in his individual capacity, for his alleged deliberate indifference to the detainee's serious medical needs. The court found that the county's actions in shutting off water to the mentally ill, diabetic pretrial detainee's cell when the inmate was stuffing clothing into the cell's toilet did not violate the detainee's 14th Amendment rights. According to the court, the estate's claim against the county that the detainee, who died of diabetic ketoacidosis after allegedly refusing diabetic treatment and food while incarcerated, was not properly treated for her mental illness and diabetes was not actionable under the Americans with Disabilities Act or the Rehabilitation Act. (Champaign Co. Jail, Illinois)

U.S. Appeals Court
SEARCH
EQUAL PROTECTION
ACCESS TO COURT

Johnson v. Government of Dist. of Columbia, 734 F.3d 1194 (D.C. Cir. 2013). Female arrestees who were forced to endure strip searches while awaiting presentment at hearings at the District of Columbia Superior Court filed a class action against the District of Columbia and a former United States Marshal for the Superior Court, alleging that such searches violated the Fourth Amendment. They also alleged a violation of the Fifth Amendment's equal protection guarantee, where men were not similarly strip searched. The district court granted summary judgment to the District and the Marshal. The arrestees appealed. The appeals court affirmed. The appeals court found that the former marshal who administered the Superior Court cellblock was at all times a federal official acting under the color of federal law, and, thus, the District of Columbia could not be held liable under § 1983 for the marshal's conduct. The court noted that the statutory scheme gave the District of Columbia no power to exercise authority over, or to delegate authority to, the marshal, and lacked the discretion to stop sending pre-presentment arrestees to the marshal. According to the court, any Fourth Amendment right that the former United States Marshal may have violated by subjecting detainees arrested on minor charges to blanket strip searches was not clearly established at the time of any violation, and therefore the marshal was entitled to qualified immunity on the detainees' claims alleging violations of their Fourth Amendment rights. The court also found no evidence that the marshal purposefully directed that women should be treated differently than men with respect to the strip-search policy at the Superior Court cellblock, in violation of the Fifth Amendment's equal protection guarantee. (District of Columbia, United States Marshal for the Superior Court)

U.S. District Court
MEDICAL CARE
FAILURE TO PROTECT

Keele v. Glynn County, Ga. 938 F.Supp.2d 1270 (S.D.Ga. 2013). A pretrial detainee's estate brought an action against a county, county sheriff, and officials at the county detention facility in their official and individual capacities, alleging that, while detained, the detainee's access to necessary medical care was delayed or deficient and that the delay or deficiency led to the detainee's death. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the detainee's bruised or fractured ribs and rash were objectively serious medical needs, as required for the estate's deliberate indifference claim against officials at the county detention facility under Fourteenth Amendment. According to the court, a lay person would be alerted to the necessity of medical attention after the detainee lost control of her bowels, began to hallucinate, vomited repeatedly, became pale and developed blisters inside her mouth, and thus the detainee had an objectively serious medical need when the symptoms manifested, as required for the estate's deliberate indifference claim against the officials.

The court found that summary judgment was precluded by genuine issues of material fact regarding whether the nurse at the county detention facility was subjectively aware that the pretrial detainee faced a substantial risk of serious harm, whether the nurse was more than grossly negligent in disregarding that risk of harm, and whether the nurse's actions caused the detainee's injuries, including death. The court noted that a reasonable nurse in the county detention facility nurse's position would have known that delaying provision of medical care to a pretrial detainee with the detainee's symptoms, which included hallucinating, withdrawing from pain medication, pale, vomiting, hives, complaining of feeling bad, and not eating, drinking, or getting up to do any

activity, violated her constitutional rights, and thus the nurse failed to establish an entitlement to qualified immunity from deliberate indifference claims under the Fourteenth Amendment. According to the court, it was clearly established that knowledge of the need for medical care and intentional refusal to provide that care constituted deliberate indifference, and the law was clearly established that nearly half a day was too long to fail to properly respond to a medical need. (Glynn County Detention Center, Georgia)

U.S. Appeals Court
FAILURE TO PROTECT
PREGNANCY
SEXUAL ASSAULT

Keith v. Koerner, 707 F.3d 1185 (10th Cir. 2013). A female former prison inmate who was impregnated as a result of her vocational-training instructor's unlawful sexual acts brought a § 1983 action against a former warden and other Kansas Department of Corrections employees. The defendants moved to dismiss. The district court granted the motion in part, but denied qualified immunity for the former warden, who appealed. The appeals court affirmed. The court held that the former prison inmate adequately alleged that the former warden violated a clearly established constitutional right, precluding qualified immunity for the warden in the § 1983 action alleging that the warden was deliberately indifferent to sexual abuse by the vocational-training instructor. According to the court, the inmate alleged that the warden had knowledge of the abuse but failed to properly investigate or terminate staff when abuse allegations were substantiated, and that the prison's structural policy problems contributed to abuse by failing to address known problems with the vocational program or to use cameras to monitor inmates and staff. (Topeka Correctional Facility, Kansas)

U.S. District Court
SEXUAL ASSAULT

Pena v. Greffet, 922 F.Supp.2d 1187 (D.N.M. 2013). A female former state inmate brought a § 1983 action against a private operator of a state prison, the warden, and corrections officers, alleging violation of her civil rights arising under the Fourth, Eighth, and Fourteenth Amendments, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated claims against the operator and the warden for violations of the Eighth and Fourteenth Amendment, and for First Amendment retaliation. The inmate alleged that the operator and the warden engaged in practices of placing inmates who reported sexual abuse in segregation or otherwise retaliating against them, violating its written policies by failing to report allegations of prison rape to outside law enforcement, failing to conduct adequate internal investigations regarding rape allegations, and offering financial incentives to prison employees for non-reporting of rape allegations. The inmate alleged that the operator and the warden placed her in segregation for eight months because she reported a corrections officer's rape and another officer's assault, that the operator and warden were aware of her complaints, and that her placement in segregation was in close temporal proximity to the complaints. (New Mexico Women's Correctional Facility, Corrections Corporation of America)

U.S. District Court
ACCESS TO COURT
DISCIPLINE
DISCRIMINATION
EQUAL PROTECTION
SPECIAL NEEDS

Poche v. Gautreaux, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process. The court also found a procedural due process claim against the district attorney under § 1983 by the detainee's allegation that it was the district attorney's policy and custom to sign charging papers such as bills of information without reading them, without checking their correctness, and without even knowing what he was signing, and that the attorney's policy and custom resulted in a deprivation of her liberty without due process. The court found a substantive due process claim against the district attorney in the detainee's allegation that after obtaining clear direct knowledge that the detainee was being wrongfully and illegally held, the district attorney still failed to correct the mistakes that caused the detention, and to cover up his failures in connection with the case, the district attorney made a conscious decision to bring belated charges against the detainee. The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (East Baton Rouge Prison, Louisiana)

U.S. District Court
PRIVACY
SEARCHES
TRANSSEXUAL

Shaw v. District of Columbia, 944 F.Supp.2d 43 (D.D.C. 2013). A former pretrial detainee, a transgender woman, who underwent sex reassignment surgery and had her sex legally changed to female, brought an action against the United States Marshals Service (USMS), USMS marshals, District of Columbia, a police chief, and police officers, alleging under § 1983 that the defendants violated her Fourth Amendment rights in connection with her arrests, and asserting claims under the District of Columbia Human Rights Act and tort law. The police chief, officer, and USMS defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the USMS marshals were not entitled to qualified immunity from the unlawful search claim, where a reasonable officer would have known that a cross-gender search of a female detainee by male USMS employees that included intimate physical contact, exposure of private body parts, and verbal harassment, all in front of male detainees and male USMS employees, in the absence of an emergency, was unreasonable. The court also found that the USMS marshals and the police officer were not entitled to

qualified immunity from a § 1983 Fifth Amendment conditions of confinement claim brought by the pretrial detainee, arising from the defendants' actions in holding the detainee with male detainees and otherwise treating her as if she were male. According to the court, a reasonable officer would know that treating the female detainee as the detainee was treated exposed her to a substantial risk of serious harm, and, therefore, would know that those actions violated the detainee's due process rights. (District of Columbia Metropolitan Police Department, Sixth District Police Station and MPD's Central Cellblock, and United States Marshals Service)

U.S. Appeals Court
MEDICAL CARE
SEARCHES

Stoudemire v. Michigan Dept. of Corrections, 705 F.3d 560 (6th Cir. 2013). A female former prisoner brought an action against the Michigan Department of Corrections (DOC), a warden, and other DOC-associated officers, doctors, and nurses, asserting violations of § 1983, the Age Discrimination in Employment Act (ADEA), and state law. The prisoner alleged that she underwent three separate amputations as a result of inadequate health care by the defendants and was subjected to a strip search that served no legitimate penological purpose. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims against them, and they appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the district court did not properly evaluate the warden's qualified immunity defense to the prisoner's Eighth Amendment claim of deliberate indifference to her serious medical needs, when it denied summary judgment on qualified immunity grounds to "defendants.," The court held that remand was warranted for the court to conduct a particularized analysis of whether the warden was deliberately indifferent to the conditions of the prisoner's confinement while in quarantine. The court noted that the district court did not mention any facts in the record that specifically pertained to the warden, nor did the court make any findings regarding the warden's knowledge or mental state.

According to the court, the prisoner established, for qualified immunity purposes, that the corrections officer violated her Fourth Amendment rights by conducting a strip search of her in her cell in view of other inmates and prison personnel. The court noted that the officer received a reprimand for violating Department of Corrections (DOC) rules by conducting the strip search in view of those not assisting in the search, the officer allegedly refused to tell the prisoner her reasons for initiating the search, and smirked during the search, which suggested personal animus and implicated the prisoner's dignitary interest. The court found that the female prisoner's right not to be subjected to a suspicionless strip search in full view of others absent a legitimate penological justification was clearly established, for purposes of the female corrections officer's qualified immunity defense. (Huron Valley Women's Correctional Facility, Michigan)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Valade v. City of New York, 949 F.Supp.2d 519 (S.D.N.Y. 2013). Arrestees brought § 1983 and state law actions against police officers and a city. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment on the Fourth Amendment excessive force claim was precluded by genuine issues of material fact as to whether a police officer used excessive force against the arrestee by handcuffing her too tightly and shoving her into a police car. The court also found a genuine issue of material fact as to whether the arrestee was sexually assaulted while she was in police custody following her arrest. (New York City Police Department, Central Booking)

U.S. Appeals Court
PREGNANCY
RESTRAINTS

Villegas v. Metropolitan Government of Nashville, 709 F.3d 563 (6th Cir. 2013). An Immigration detainee filed a § 1983 action against a metropolitan government alleging deliberate indifference to her serious medical needs after she was shackled during the final stages of labor and post-partum recovery. The district court entered judgment in the detainee's favor. A jury awarded the detainee \$200,000 in damages. The defendants appealed. The appeals court reversed and remanded. The appeals court held that summary judgment should not have been granted by the district court, where there were genuine issues of material fact as to whether the pregnant immigration detainee presented a flight risk, whether the officers who accompanied her to the hospital when she went into labor were aware of the hospital's no restraint order, and whether the detainee was at risk of physical or psychological harm as a result of being shackled. The appeals court also found genuine issues of material fact as to whether the hospital prescribed a breast pump to allow the detainee to express her breast milk postpartum, and whether a layperson would recognize the need to provide the detainee with a breast pump. (Metropolitan Government of Nashville and Davidson County, Davison County Sheriff's Office, Tennessee)

2014

U.S. District Court
SEARCHES
PRIVACY

Baggett v. Ashe, 41 F.Supp.3d 113 (D.Mass. 2014). A former female inmate and current female inmates brought a class action against a sheriff and an assistant superintendent pursuant to § 1983, alleging that the policy of permitting male officers to videotape female inmates being strip-searched violated the Fourth Amendment. The defendants moved for summary judgment and the plaintiffs moved for partial summary judgment. The district court granted the inmates' motion and denied the defendants' motion. The court held that strip searches of female inmates being transferred to a segregation unit while male officers conducted videotaping in the vicinity were unreasonable in violation of the Fourth Amendment, regardless of whether the officers actually viewed the inmates, where the inmate being searched was fully aware that a male officer was videotaping her, the officer was within the inmate's view just a few feet away, the inmate was required to strip and manipulate her body in the officer's presence, including lifting her breasts and spreading her legs, and the videotaping by male officers was not limited to urgent situations. The court found that the policy did not have a reasonable relationship with a legitimate penological interest, and therefore, the policy was unconstitutional in violation of the Fourth Amendment as applied to the inmates, regardless of whether the officers actually viewed the inmates. The court noted that the policy of using males to tape searches applied to all strip searches upon transfer, not just emergencies, the prison did not have staffing problems, permitting males to tape the searches did not enhance employment opportunities, and the policy did not provide for alternatives. According to the court, clearly established law prohibited male officers from viewing female inmates during a strip search, and

therefore, the sheriff and assistant superintendent were not entitled to qualified immunity in female inmates' § 1983 class action. (Western Regional Women's Correctional Center, Massachusetts)

U.S. District Court
FAILURE TO PROTECT
SEXUAL ASSAULT
SEXUAL HARASSMENT
WORK RELEASE

Castillo v. Bobelu, 1 F.Supp.3d 1190 (W.D.Okla. 2014). Five female inmates brought a § 1983 action against state officials and employees, alleging they were subjected to sexual abuse while working outside a community corrections center in which they were housed, in violation of the Eighth Amendment. The inmates were participating in the Prisoner Public Works Program ("PPWP") that allowed offenders to work off-site at different state offices. They were working during the day doing grounds maintenance at the Oklahoma Governor's Mansion, where they were supervised by a groundskeeper and his immediate supervisor. When inmates work at places such as the Governor's Mansion, the DOC does not have a guard stay with the women at the work site. Instead, they are supervised by state workers employed at the work site, who function like guards. These individuals go through an eight hour training program. The inmate claimed that they were sexually harassed and sexually assaulted by the groundskeeper and by a cook employed at the Governor's Mansion.

The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to (1) whether prison guards were deliberately indifferent. The court held that: (1) the prison district supervisor did not have knowledge of a substantial risk of harm to the inmates because the supervisor did not know that the inmates were working only with males while off-site; (2) the supervisor was not deliberately indifferent; (3) the prison supervising case manager was not deliberately indifferent; and (4) there was no evidence that the employee had supervisory authority over the inmate. The court noted that the inmate did not return to the work assignment where she was allegedly abused by state employees or have contact with the alleged abusers, as required for the continuing violation doctrine to apply to her § 1983 action that alleged violations of the 8th Amendment.

According to the court, despite the supervisor being aware of misconduct by a groundskeeper under his supervision, the supervisor was aware that the groundskeeper violated certain policies, but did not have knowledge of the sexual assaults, and he investigated the groundskeeper's conduct and counseled the groundskeeper. The court also found that the prison supervising case manager, who oversaw the off-site public works program, was not deliberately indifferent to the excessive risk of sexual assaults of female inmates working at the governor's mansion as part of the program, where the inmates did not complain to the manager and the manager was never informed of misconduct. (Hillside Community Corrections Center, Oklahoma City, Oklahoma)

U.S. Appeals Court
MEDICAL CARE

Hahn v. Walsh, 762 F.3d 617 (7th Cir. 2014). A female pretrial detainee's estate brought an action against a county, sheriff, and medical services contractor, alleging the defendants failed to provide adequate medical treatment for the detainee's diabetes in violation of her rights under the Fourteenth Amendment, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Illinois law. After several of the estate's claims were dismissed, the district court entered summary judgment for the defendants on the estate's remaining claims. The estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court abused its discretion in dismissing with prejudice the wrongful death claim brought by the detainee's estate for failure to include an affidavit and written report confirming the claim's merit, where the court made no specific finding that failure to include an affidavit and report was in bad faith or an attempt to delay litigation, and its conclusion that the estate could not timely file an amended complaint because the statute of limitations had lapsed failed to take into account the possibility that an amendment would relate back to the estate's initial, timely complaint. The court found that the county sheriff's lack of a written policy or procedure for diabetic detainees whose blood sugar was not being measured and who refused to eat did not amount to deliberate indifference to the pretrial detainee's serious medical needs in violation of her due process rights. According to the court, the deaths of seven correctional facility inmates and a single incident of an inmate complaining about his diabetes treatment were insufficient to put the sheriff on notice that his lack of a policy could cause the death of a detainee as a result of diabetic ketoacidosis, as none of the deaths were caused by complications from diabetes. (Champaign County Correctional Center, Illinois)

U.S. Appeals Court
GID- Gender Identity
Disorder
MEDICAL CARE

Kosilek v. Spencer, 774 F.3d 63 (1st Cir. 2014). A state inmate brought an action against the Massachusetts Department of Corrections (DOC), alleging that the DOC's refusal to provide male-to-female sex reassignment surgery (SRS) to treat the inmate's gender identity disorder (GID) constituted inadequate medical care and deliberate indifference to the inmate's serious medical needs, in violation of the Eighth Amendment. The district court granted an injunction requiring the DOC to provide SRS, and the DOC appealed. The appeals court reversed. The court held that the DOC's decision not to provide SRS to treat the inmate's GID was not sufficiently harmful to the inmate so as to violate the Eighth Amendment, and the DOC was not deliberately indifferent in refusing to provide SRS. The court noted that the DOC continued to provide all ameliorative measures to the inmate, in addition to antidepressants and psychotherapy. The DOC solicited the opinion of multiple medical professionals, and the DOC's concerns about safety and security, including the provision of safe housing options for the inmate after SRS, were reasonable, according to the court. (Massachusetts Department of Corrections)

U.S. District Court
PREGNANCY
MEDICAL CARE

Mori v. Allegheny County, 51 F.Supp.3d 558 (W.D.Pa. 2014). An inmate who was seven and one-half months into a "high risk" pregnancy brought an action under § 1983 against a county for deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, and survival and wrongful death claims for violations of the Fourteenth Amendment, after the loss of the child following a placental abruption. The county moved to dismiss. The district court denied the motion. The court held that the prisoner: (1) stated an Eighth Amendment claim based on failure to monitor the unborn child after the prisoner complained of vaginal bleeding; (2) stated a claim against the county based on custom and practice; (3) sufficiently alleged a causal link between the policies and the loss of the child; (4) stated a claim against county

officials for individual liability; and (5) stated wrongful death and survivor claims for the death of the child.

The inmate alleged that individual policy makers, including the chief operating officer of the county jail's health services, and the jail's nursing supervisor, were responsible for the policies that led to failure to provide adequate medical treatment. The prisoner also alleged that she was made to wait over 24 hours before being sent to a hospital after her vaginal bleeding started, that she was transported by a police cruiser rather than ambulance, that it was well known that bleeding late in pregnancy often indicated serious medical issues, that the child was alive during birth, and that the delay in medical treatment contributed to the injuries during birth and the death of the child shortly after birth. (Allegheny County Jail, Pennsylvania)

U.S. District Court
MEDICAL CARE
SEXUAL ASSAULT

Poore v. Glanz, 46 F.Supp.3d 1191 (N.D.Okla. 2014). A juvenile female held as an inmate in the medical unit of a county jail brought an action against the county and the county sheriff in his individual capacity under § 1983 alleging deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, based on an alleged failure to prevent a detention officer's repeated sexual assaults. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine disputes of material fact as to whether the county sheriff was aware of the risk of sexual assault by detention officers as to female inmates housed in the medical unit of the county jail, and whether he failed to take steps to alleviate that risk. The court also found a genuine dispute of material fact as to whether the county jail had a policy and practice of housing juvenile female inmates in a wing of the medical unit which was not under direct supervision and was frequently single-staffed, such that it placed those inmates at a substantial risk of sexual assault by jail staff. (Tulsa County Jail, also called the David L. Moss Criminal Justice Center, Oklahoma)

U.S. District Court
MEDICAL CARE

Scott v. Clarke, 61 F.Supp.3d 569 (W.D.Va. 2014). Female inmates brought a § 1983 action alleging that a correctional facility failed to provide adequate medical care and that Commonwealth of Virginia Department of Corrections (VDOC) officials were deliberately indifferent to that failure, in violation of the inmates' Eighth Amendment rights. The inmates moved for class certification. The district court held that class certification was warranted under the subsection of the class action rule pertaining to cases where predominantly injunctive or declaratory relief was appropriate. The court found that the proposed class of approximately 1,200 female inmates housed at the state correctional facility who were subject to its medical care system was sufficiently large, on its face, to satisfy the size requirement for class certification, and that the "commonality" requirement for class certification was met. The court noted that one of the questions of fact was whether the VDOC medical contract system permitted improper cost considerations to interfere with the treatment of serious medical conditions. (Fluvanna Correctional Center for Women, Commonwealth of Virginia Department of Corrections)

U.S. District Court
MEDICAL CARE

Scott v. Clarke, 64 F.Supp.3d 813 (W.D.Va. 2014). Prisoners brought a § 1983 action against prison officials, alleging failure to provide adequate medical care in violation of the Eighth Amendment. The district court granted the prisoners' motion for summary judgment. The court held that: (1) the state department of corrections has a non-delegable duty to provide prisoners with medical care that meets constitutional minimum standards; (2) the prisoners had serious medical needs; and (3) a genuine issue of material fact existed as to whether the prison officials were deliberately indifferent to the prisoners' serious medical needs. The court noted that the prisoners' serious medical needs included: (1) one prisoner who had sarcoidosis, which was a potentially life-threatening chronic inflammatory disease that could affect the body's vital organs; (2) another prisoner had Hepatitis C; (3) another prisoner had severely deformed ingrown toenail that made it difficult to walk when inflamed and infected, and she was profoundly hearing impaired; and (4) a final prisoner suffered from various medical problems, including degenerative disc disease affecting her neck and spine, bi-lateral carpal tunnel syndrome in her wrists, a bladder condition causing constant incontinence, and chronic kidney disease. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the decision by prison officials to favor lower contract costs over the likely quality of resulting care was deliberate indifference to the prisoners' serious medical needs. (Fluvanna Correctional Center for Women, Commonwealth of Virginia Department of Corrections)

U.S. District Court
MEDICAL CARE
SPECIAL NEEDS

Stoudemire v. Michigan Dept. of Corrections, 22 F.Supp.3d 715 (E.D.Mich. 2014). A female former prisoner, who was a double amputee, brought an action against the Michigan Department of Corrections (MDOC) and various MDOC-associated officers and healthcare professionals, asserting violations of § 1983, the Americans with Disabilities Act (ADA), and state law. The prisoner alleged failure to provide adequate health care and accommodations for disabled individuals. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims. The defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand the district court held that: (1) a fact question as to whether the warden was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed precluded summary judgment, and (2) it was clearly established that deliberate indifference to serious medical needs of prisoners constituted the unnecessary and wanton infliction of pain proscribed by Eighth Amendment. The prisoner alleged that she acquired MRSA following the amputation of her left leg. As a result of her condition, her housing assignment at the facility was changed from the infirmary to the segregation unit. The prisoner alleged that there was an absence of handicap facilities within this unit, that she was unable to safely transfer from her wheelchair to the bed or toilet, and that she was allowed only one shower during the two weeks while housed in segregation. (Huron Valley Women's Correctional Facility, Michigan)

2015

U.S. District Court
SEARCHES
PRIVACY

Blanco v. County of Kings, 142 F.Supp.3d 986 (E.D. Cal. 2015). An arrestee brought an action against a county, city, and county and city law enforcement officers alleging violations of her First, Fourth, Fifth and Fourteenth Amendment rights under § 1983, stemming from an alleged cross gender strip search at a county jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the female arrestee sufficiently alleged that a male law enforcement officer's entering a room while she was still undressed following a strip search at the county jail, in order to interrogate her further, and in absence of a compelling interest or emergency, violated her right to privacy, as required to state claim under § 1983 for violation of the Due Process Clause of the Fourteenth Amendment. The court found that the officer's conduct in entering the room was outrageous, willful, and intended to cause her mental anguish that directly and proximately caused the arrestee severe and protracted emotional distress likely to result in a "permanent disability," as required to state a claim under the California law for intentional infliction of emotional distress (IIED). (City of Lemoore Police Department, Kings County Jail, California)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Cavanagh v. Taranto, 95 F.Supp.3d 220 (D. Mass. 2015). A pretrial detainee's son brought an action under § 1983 against correctional officers who were on duty the day of the detainee's suicide, alleging the officers violated the detainee's due process rights. The officers moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent to the detainee's mental health history and safety, to her safety through inadequate cell checks, or to her safety by failing to remove a looped shoelace from her cell. The court noted that the detainee was not identified as a suicide risk, the officers did not have access to the detainee's medical records, the officers were not trained to make suicide assessments, and the detainee's risk of suicide was not so obvious that someone other than a professional could have recognized the risk. The court noted that even if an expert's report prepared for the plaintiff had been filed on time, the report would have been excluded due to the expert's lack of qualifications. According to the court, the expert only pointed to national statistics as support for his opinion that the detainee possessed predisposing characteristics that made her an obvious risk for suicide, and the expert's opinions that the officers were improperly trained and a reasonable mental health clinician would have deemed the detainee to pose a suicide risk were irrelevant. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
TRANSFER
HYGIENE
SEARCHES
PRIVACY
MEDICAL CARE

Chavarriga v. New Jersey Dept. of Corrections, 806 F.3d 210 (3d Cir. 2015). A former prisoner brought a § 1983 action in state court against the New Jersey Department of Corrections (NJDOC), the former New Jersey Attorney General, the New Jersey Commissioner of Corrections, a correctional sergeant, and various other correctional officers. The prisoner alleged that the defendants violated her constitutional rights when they transferred her from one place of confinement to another where they denied her potable water, clothing, sanitary napkins, and subjected her to an unlawful body cavity search. The district court granted summary judgment in favor of the Attorney General, Commissioner of Corrections, and correctional sergeant, and dismissed the remaining claims. The prisoner appealed. The appeals court affirmed in part and reversed in part and remanded. The appeals court held that: (1) NJDOC's policies regarding custodial placements and the Due Process Clause did not give the prisoner a liberty interest in being housed in a particular institution, as required to support a due process claim based on the prisoner's transfers among custodial facilities; (2) allegations that correctional officers deprived the prisoner of potable water were sufficiently serious so as to reach level of an Eighth Amendment violation; (3) allegations that correctional officers forced her to walk down a staircase and hallway naked in plain view of male prison personnel and inmates to reach a shower were sufficiently serious so as to reach the level of Eighth Amendment violation; (4) allegations that she was denied her sanitary napkins and medication for migraine headaches and menstrual cramps were sufficiently serious so as to reach the level of an Eighth Amendment violation; and (5) the prisoner plausibly alleged that a correctional officer maliciously searched her body cavities, as required to state a claim against the officer for using excessive force in violation of the Eighth Amendment, where the prisoner alleged facts demonstrating that a cavity search was not routine, that the cavity search was conducted in a manner that violated New Jersey regulations, and alleged that the cavity search was so painful that during the search prisoner cracked a molar while clenching her teeth. The court noted that a state has broad authority to confine an inmate in any of its institutions, and thus, courts recognize that a state's authority to place inmates anywhere within the prison system is among a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts. (Garrett House Residential Community Release Facility, Edna Mahan Correctional Facility, New Jersey)

U.S. Appeals Court
FAILURE TO PROTECT
SEXUAL ASSAULT

Henderson v. Glanz, 813 F.3d 938 (10th Cir. 2015). A special needs inmate brought a § 1983 action against a county sheriff and detention officers, alleging an Eighth Amendment violation for deliberate indifference to the risk of assault. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court reversed in part and dismissed in part. The district court held that undisputed record facts blatantly contradicted the district court's factual determination, in denying summary judgment based on qualified immunity. According to the court, the detention officer who left his post in the jail's medical unit to deliver a gurney during a medical emergency was entitled to qualified immunity from the special needs inmate's Eighth Amendment claim arising from her sexual assault by a fellow inmate while in the unit's tub room. The court noted that the officer had no subjective knowledge of the risk of assault to the inmate, and left believing the inmate was in a locked room under the supervision of another officer. (David L. Moss Criminal Justice Center, Tulsa, Oklahoma)

U.S. District Court
EQUAL PROTECTION

Lopez v. Cipolini, 136 F.Supp.3d 570 (S.D.N.Y. 2015). A prisoner brought a § 1983 action against prison officials, asserting claims for violation of her Free Exercise Clause rights under the First Amendment, the Religious Land and Institutionalized Person Act (RLUIPA), and the Fourteenth Amendment's Equal Protection Clause, alleging that she was prohibited from attending religious services. The officials moved to dismiss the action. The district court granted the motion in part and denied in part. The court held that the prisoner's allegation that prison officials prevented her from attending religious services was sufficient to support a claim for violation of the Equal Protection Clause. According to the court, the prisoner's allegation that a prison official prevented her from attending two religious services "because of her hair" and because of "her sexuality," while other prisoners in the facility were not prevented from attending those services, was sufficient to allege that she was treated differently from others similarly situated, as required to support a claim that prison officials discriminated against her in violation of the Equal Protection Clause. The court noted that there was no legitimate penological interest that would be served by denying the prisoner the right to attend religious services based on her hair and/or sexuality. (Downstate Correctional Facility, New York)

U.S. District Court
FAILURE TO PROTECT

Nagy v. Corrections Corporation of America, 79 F.Supp.3d 114 (D.D.C. 2015). A female detainee brought an action in the District of Columbia Superior Court against the operator of a correctional facility, alleging negligence, negligent supervision, negligent infliction of emotional distress, and intentional infliction of emotional distress. The operator moved the action to federal court and moved for summary judgment. The district court denied the motion, finding that summary judgment was precluded by genuine issues of material fact as to: (1) whether the operator caused the detainee's injuries stemming from a second alleged assault by failing to follow up on the first alleged assault by guards at the correctional facility; (2) whether the detainee was injured by outrageous behavior of the guards; (3) whether the guards negligently handled the detainee, and (4) whether this negligence physically injured the detainee. The detainee alleged that she was abused almost immediately upon arrival at the facility, when two correctional officers grabbed her by the arms, took her to a locked cell, and threw her against the commode. She alleged that she landed sideways on her back, and that the officers kicked her on her right side, broke her ribs, and bruised her body. She reported the incident to corrections officials. Six days later, she was once again allegedly assaulted "by staff and officers." She showed her injuries to a doctor who observed bruises on her buttocks and hips "of varying stages, none that appeared newer than 2-3 days old with some yellowing and fading." (Correctional Treatment Facility, Corrections Corp. of America, District of Columbia)

U.S. Appeals Court
TRANSSEXUAL

Norsworthy v. Beard, 802 F.3d 1090 (9th Cir. 2015). A transsexual female prison inmate filed a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria, in violation of the Eighth Amendment. The district court issued a preliminary injunction ordering the officials to provide the inmate with sex reassignment surgery, and the officials appealed. The injunction was stayed. The appeals court reversed and remanded, finding that the inmate's release from prison rendered the action moot, and remand was warranted for determination of whether her release while her appeal was pending was the result of the officials' actions. (California Department of Corrections and Rehabilitation)

U.S. District Court
TRANSSEXUAL
GID- Gender Identity
Disorder
MEDICAL CARE
EQUAL PROTECTION

Norsworthy v. Beard, 87 F.Supp.3d 1104 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate also alleged that the officials were deliberately indifferent to her medical needs and deprived her of her right to equal protection under the law when they denied her sex reassignment surgery. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that: (1) the inmate stated a claim for prospective injunctive relief; (2) the inmate stated an Eighth Amendment deliberate indifference claim based on denial of the request for sex reassignment surgery; (3) the inmate stated an equal protection claim; but (4) the inmate failed to state an Eighth Amendment deliberate indifference claim based on denial of a request for a legal name change. (Mule Creek State Prison, California)

U.S. District Court
TRANSSEXUAL
GID- Gender Identity
Disorder
MEDICAL CARE

Norsworthy v. Beard, 87 F.Supp.3d 1164 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate moved to strike expert testimony and for a preliminary injunction requiring the defendants to provide her with sex reassignment surgery (SRS). The defendants moved for judicial notice. The district court granted the motions in part and denied in part. The district court found that the expert report of a psychiatrist retained by the officials and medical staff would not be stricken for failure to comply with the requirements for disclosure of expert qualifications, and that the expert was qualified to testify regarding prison culture and the treatment that incarcerated persons with gender dysphoria should receive. The court noted that notwithstanding years of treatment in the form of hormone therapy and counseling, the inmate continued to experience severe psychological pain, and that the treating and examining psychologists agreed the inmate met the eligibility criteria for SRS under the standards of care for treating transsexual patients. The court held that: (1) the inmate was likely to succeed on the merits of the Eighth Amendment claim; (2) the inmate was suffering irreparable harm that would likely continue absent a preliminary injunction; (3) the balance of equities weighed in favor of granting an injunction; (4) it was in the public interest to grant an injunction; and (5) an injunction would meet the requirements of the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)

U.S. District Court
SEXUAL ASSAULT

Pena v. Greffet, 110 F.Supp.3d 1103 (D.N.M. 2015). A female prison inmate brought an action under § 1983 for numerous violations of her constitutional rights, including under the Fourth, Eighth, and Fourteenth Amendments against employees of the contractor that operated the correctional facility, and against the contractor under the theory of vicarious liability, for alleged physical and sexual assault by employees while she was incarcerated. The defendants moved for judgment on the pleadings. The district court denied the

motion. The court held that the “aided-in-agency” theory of vicarious liability applied to the female prison inmate’s claims under § 1983 against the contractor after the contractor’s employee repeatedly sexually assaulted the inmate. According to the court, the employee’s relationship with the inmate by virtue of his employment conferred “extraordinary power” upon him, the employee’s authority to do as he wished appeared to be delegated to him, and the inmate was unlikely to be able to successfully complain about the employee’s actions. The court noted that the issue of whether the employer was vicariously liable for the employee’s repeated rape and sexual assault of the inmate was for a jury to decide in the inmate’s claim under § 1983 for violations of numerous constitutional rights, including the right to bodily integrity under the Fourteenth Amendment. (New Mexico Women’s Correctional Facility, operated by Corrections Corporation of America)

U.S. Appeals Court
SEARCHES

Peters v. Risdal, 786 F.3d 1095 (8th Cir. 2015). A pretrial detainee filed a § 1983 action against a county, county sheriff, and jail officers alleging that she was subjected to an unreasonable search, that her right to freedom of speech was violated, and that the officers used excessive force. The district court granted the defendants’ motion for summary judgment on the unreasonable search claim, and after a jury verdict, in the officers’ favor on the remaining claims, and denied the detainee’s motion for a new trial. The detainee appealed. The appeals court affirmed, finding that the officers did not violate the detainee’s Fourth Amendment rights when they forcibly removed her clothing in a holding cell. According to the court, it was objectively reasonable for county jail officers to believe that the pretrial detainee presented a risk of harm to herself if she was permitted to retain strings on her clothing, and thus the officers did not violate her Fourth Amendment rights when they forcibly removed her clothing in a holding cell. The court noted that the detainee refused to respond to medical screening questions, refused to comply with a female officer’s instruction to change into an orange jumpsuit while male officers were outside the holding cell, and acted aggressively toward the male officers when they entered. The officers restrained the detainee face down on her stomach and covered her with a paper suit while the female officer removed her clothing. (Woodbury County Jail, Iowa)

U.S. Appeals Court
TRANSEXUAL
GID- Gender Identity
Disorder
MEDICAL CARE

Rosati v. Igbinoso, 791 F.3d 1037 (9th Cir. 2015). A transgender inmate brought a pro se § 1983 action alleging that prison officials violated the Eighth Amendment by their deliberate indifference to her serious medical needs. The district court dismissed the action without leave to amend. The inmate appealed. The appeals court reversed and remanded, finding that the inmate’s complaint, alleging that she suffered from severe gender dysphoria for which male-to-female sexual reassignment surgery (SRS) was the medically necessary treatment, but that prison officials refused to provide the surgery, stated a cause of action under Eighth Amendment. (Pleasant Valley State Prison, California)

U.S. District Court
SUICIDE

Shepard v. Hansford County, 110 F.Supp.3d 696 (N.D. Tex. 2015). A husband brought an action against a county and a county jail employee under § 1983 alleging deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, following his wife’s suicide while in the county jail. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the jail employee was entitled to qualified immunity; (2) summary judgment was precluded by a fact issue as to whether the jail employee violated the detainee’s rights, (3) the county had an adequate suicide risk prevention training policy, where employees were required to attend training to learn about suicide risk detection and prevention methods, and were required to read the county’s policy on conducting face-to-face suicide checks with detainees; (4) the county adequately trained employees on cell entry; but (5) a fact issue existed as to whether the county had an unwritten policy of understaffing the jail, precluding summary judgment. The court noted that it was not clearly established at the time of the suicide that an employee was required to abandon other duties to ensure that suicide watch checks were completed, and it was not clearly established that the employee was prohibited from providing a detainee with a towel in a cell with “tie-off points,” since the employee was not aware of any other suicides in that cell.

According to the court, the jail cell entry policy prohibiting jail employees from entering a cell alone did not amount to training employees to be deliberately indifferent to the needs of detainees, and was not causally related to the detainee’s death, and thus the county was not liable under § 1983 for deliberate indifference to detainee health. (Hansford County Jail, Texas)

U.S. District Court
CLASSIFICATION
CONDITIONS
EXERCISE
HYGIENE
MEDICAL CARE
SEARCHES

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill.

The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment.

The court also found fact issues as to whether the county sheriff’s deputies’ manner of conducting a visual body cavity search of the female pretrial detainee on three occasions exhibited exaggerated and excessive force, and was vindictive or harassing, precluding summary judgment on the detainee’s § 1983 Fourth Amendment unlawful search claim against the deputies.

The court found that there was no evidence that county jail employees’ alleged failure to adequately treat the detainee’s blood condition caused her measurable harm, where there was no indication that the alleged denial of treatment caused the detainee any physical pain, or that any mental anguish the detainee suffered was

related to denial of her medication.

The court denied summary judgment to the defendants on the detainee's claim that she was denied dental treatment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
PREGNANCY
MEDICAL CARE
TRANSFER

White v. Bukowski, 800 F.3d 392 (7th Cir. 2015). A pregnant county prisoner brought a civil rights action under § 1983 against a county sheriff's office, alleging violation of her Eighth Amendment rights, alleging deliberate indifference to her need for proper prenatal care and prompt transport to a hospital for delivery of her baby while she was in their temporary custody. The county moved to dismiss. The district court granted the motion and the prisoner appealed. The appeals court reversed and remanded, finding that no administrative remedies were available, and thus the prisoner did not fail to exhaust administrative remedies under the requirements of the Prison Litigation Reform Act. The prisoner alleged that the delay in her transport to the hospital contributed to her baby's birth defects. According to the court, the prisoner had no opportunity to grieve the delay in transport until after the harm was done, the prisoner was uninformed about any deadline for filing a grievance, the prisoner would not have known that she would be transferred to another jail four days after returning from the hospital, and the prisoner could not have filed a grievance after she was transferred. (Kankakee County Jail, Illinois)

SECTION 18: FOOD

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1967

U.S. Appeals Court
RELIGIOUS DIET Jackson v. Pate, 382 F.2d 517 (7th Cir. 1967). Black Muslim diets must be recognized if other special religious diets are recognized. (State Prison, Illinois)

1969

U.S. Appeals Court
RELIGIOUS DIET Barnett v. Rogers, 410 F.2d 995 (D.C. Cir. 1969). One full-course pork-free diet once a day represents the minimum jail authorities are required to do. (D.C. Jail)

1970

U.S. District Court
KITCHEN
SANITATION Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). Unsanitary condition of jail kitchen contributes to court's finding of constitutional violation. (Orleans Parish Prison, Louisiana)

1971

U.S. District Court
FOOD TEMPERATURE
NUTRITION
SERVING
SANITATION
INSPECTIONS Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Food shall be served at the proper temperature, fresh, and in reasonable variety. Minimum nutritional standards shall be maintained, and food purchasing shall be reorganized to that end. Serving methods, kitchen equipment, food storage, sanitation, and health requirements for food service workers shall be the same as for restaurants. The kitchen and food service shall be regularly inspected by public health authorities. (Lucas County Jail, Ohio)

1972

U.S. District Court
FOOD HANDLERS Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Food handlers must be examined by a licensed physician. (Dallas County Jail, Texas)

1973

U.S. Appeals Court
RELIGIOUS DIET Elam v. Henderson, 472 F.2d 582 (5th Cir. 1973), cert. denied, 414 U.S. 868. When the menu allows for a selection and pork free items offered are sufficient to prevent malnutrition, prison officials need not offer a special diet to religious sects. (Atlanta Federal PePLRA-Prison Litigation Reform Act nitarian, Georgia)

U.S. District Court
STAFF
INSPECTIONS
SANITATION
MEDICAL DIET
RECORDS Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). A trained and experienced Food Service Manager with management skills must be hired and given direct authority over the kitchen operation. The county health department should periodically inspect kitchen facilities to insure that they meet ordinary standards. There must be a regular cleaning schedule for all kitchen equipment. Any diet prescribed by a physician must be provided for the patient, and a record of each prescribed diet must be available for cooks and servers. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
TEMPERATURE
QUALITY Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Low quality and temperature of food service contributes to a finding of cruel and unusual punishment. (St. Louis County Jail, Missouri)

1975

- U.S. District Court
STAFF
DINING Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). A full-time dietitian or food specialist shall be employed. Meals shall be served in a common dining area for each cell block; except where inmates require maximum security segregation, no inmate shall be served a meal in his cell. (Harris County Jail, Texas)
- U.S. District Court
DINING Dillard v. Pitchess, 399 F.Supp. 1225 (C.D. Calif. 1975). Fact that jail had no dining hall to accommodate prisoners and that prisoners were thus forced to eat standing up in halls or in their cells contributes to court's finding of constitutional violation. (Los Angeles County Jail, California)
- U.S. District Court
SANITATION
NUTRITION Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Sanitary and nutritious meals contribute to the absence of cruel and unusual punishment. (York County Prison, Pennsylvania)

1976

- U.S. District Court
FOOD HANDLERS
HEALTH STANDARDS
RELIGIOUS DIETS Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Food must be handled and prepared under conditions which meet the minimum public health standards. Authorities must make reasonable efforts to accommodate dietary restriction of religious groups. (Golden Grove Adult Correctional Facility, Virgin Islands)
- U.S. District Court
MEDICAL DIETS Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Jail inmates shall be furnished such special diets as prescribed by a physician or any other member of the jail medical staff. (Escambia County Jail, Pensacola, Florida)
- U.S. District Court
KITCHEN Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Deterioration of kitchen area contributes to finding of unconstitutionality. (Douglas County Jail, Nebraska)

1977

- U.S. District Court
RELIGIOUS DIETS
MEDICAL DIETS
FOOD QUALITY
VARIETY
DINING
FOOD HANDLERS
INSPECTIONS Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Detainees whose religious faiths dictate that they may not eat certain foods may be supplied with a diet that will take into consideration their religious beliefs (i.e. Muslims and pork). Detainees shall be furnished special diets as prescribed by their physicians or any other member of the jail medical staff. Those whose religious faiths dictate that they may not eat certain foods may be supplied with a diet that will take into consideration their religious beliefs.
Food shall be served fresh at the proper temperature, in reasonable variety and quantity. Three daily meals shall be served on a regular basis. Detainees shall be furnished appropriate space for taking meals. All individuals involved in preparation, handling, or service of food shall meet minimum public health standards for restaurant employees. The jail kitchen shall be inspected monthly by the health department or another agency approved by the court. (Platte County Jail, Missouri)
- U.S. District Court
SEGREGATION
UTENSILS
TEMPERATURE Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Inmates in segregation shall receive the same food as other inmates. Eating utensils must be made to withstand temperatures to 170 degrees or more in order for them to be sanitized. Alternatively, disposable plastic utensils may be used. Food carts will be provided to keep hot food at the proper temperature. (Jackson County Jail, Kansas City, Missouri)
- U.S. District Court
FOOD HANDLERS
SEGREGATION Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Food handlers are subject to state codes. Inmates in solitary confinement are to be given three meals per day. (Lubbock County Jail, Texas)

1978

- U.S. District Court
DINING Rutherford v. Pitchess, 457 F.Supp. 104 (C.D. Calif. 1978). and Steward v. Gates, 450 F.Supp. 583 (C.D. Calif. 1978). Inmates must be allowed at least fifteen minutes to eat. (Los Angeles County Central Jail)

1979

- U.S. District Court
MEDICAL DIETS
COMMISSARY Jefferson v. Douglas 493 F.Supp. 13 (W.D. Okla. 1979). According to the U.S. District Court for the Western District of Oklahoma, prison officials' cancellation of an inmate's canteen privileges in order to insure that he remain within the bounds of a prescribed diabetic diet does not amount to cruel and unusual punishment.
Halton Jefferson, an inmate at the Lexington, Oklahoma Assignment and Reception Center (LARC) filed a pro-se action under Section 1983 alleging that the decision of prison officials to refuse him canteen privileges amounted to cruel and unusual punishment. Jefferson, a diabetic, cited medical journals which suggested that a

diabetic should always carry sugar items to prevent the occurrence of a diabetic coma. Since he was restricted to a non-sugar diet, Jefferson contended the canteen was the only source from which he could obtain sugar items to protect himself against a coma. A report, ordered by the trial judge in Jefferson's suit, revealed a different aspect of the matter. LARC, recognizing that Jefferson was a diabetic, had prepared a special diet for him, limiting his caloric intake to 1800 calories per day. Later, this figure was reduced to 1500 calories. Nevertheless, Jefferson continued to gain weight.

Canteen records and verbal reports showed that Jefferson made a habit of eating such items as ice cream, bread, peanut butter and jelly sandwiches, sweet rolls, Fritos, Cheetos, soda pop (sugared) and candy. The report termed Jefferson's conduct a "deliberate effort to violate the special diet ordered for him." Presented with these facts, the court noted that the decision of the LARC officials to eliminate Jefferson's canteen privileges was the type of administrative decision with which court should not interfere. Moreover, the court stated that the action falls far short of shocking the conscience, a showing which is essential to demonstrate cruel and unusual punishment. As a result of these findings, the court thus dismissed the inmate's complaint. (Assignment and Reception Center, Lexington, Oklahoma)

U.S. District Court
RELIGIOUS DIETS

Muhammad-D.C.C. v. Keve, 479 F.Supp. 1311 (D. Del. 1979). Muslims are to be provided with a nutritionally adequate pork-free diet. (Delaware Corrections Center)

1980

U.S. Appeals Court
NUTRITION

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). Inmates are to be provided with a nutritionally adequate diet. (Sebastian County Jail, Arkansas)

U.S. District Court
SANITATION
PORTIONS

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegation of unsanitary food utensils and the provision to inmates in the Special Housing Unit of food portions smaller than provided to the general population state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. District Court
SANITATION
STAFF
FOOD HANDLERS

Lightfoot v. Walker, 486 F.Supp. 504 (S.D. Ill. 1980). All food is to be stored under sanitary conditions. The diet is to be prepared under the supervision of a trained dietician. All kitchen personnel are to be properly trained and given physical examinations so as to prevent the spread of illness and disease as a result of contact with the food and utensils. (Menard Correctional Center, Menard, Illinois)

U.S. Appeals Court
MEDICAL DIET

Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980). Delay in provision of medical treatment as well as failure to provide either a prescribed diet or the prescribed medication for a period of time following return from a hospital states a claim for deliberate indifference to known medical needs. (Alabama State Prison)

U.S. District Court
NUTRITION
QUALITY
INSPECTIONS
FOOD HANDLERS

Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Meat served shall be butchered professionally and subject to inspection. Road-killed meat shall not be served. The food shall be nutritious. The public health regulations are to be followed, and there is to be regular inspection by the public health officials. All food handlers are to be checked for communicable diseases. (Choctaw County Jail, Alabama)

U.S. Appeals Court
SANITATION
KITCHEN

Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041. While the state health code does not establish a constitutional minimum for the conditions of a kitchen, it is substantial evidence of what constitutes the humane conditions required by the eighth amendment. The record indicates that the conditions of the kitchen constitute a substantial hazard to the health of the inmates and that they, therefore, violate the eighth amendment. (State Penitentiary, Canon City, Colorado)

U.S. District Court
RELIGIOUS DIETS

Schlesinger v. Carlson, 489 F.Supp. 612 (M.D. Penn. 1980). Where negligible security problems are involved and the individual is a truly devout orthodox Jew who will not eat from the kosher kitchen of the correctional institution during Passover because (and for objective reasons) the kitchen does not meet the religious dietary law as he interprets them (despite the fact that they meet the standards of all other orthodox Jews in the institution and several, but not all, inspecting rabbis), he is entitled to be able to prepare his meals in his cell in a kosher manner or to be placed in a setting where he can receive kosher food in accordance with his interpretation of the religious dietary laws. He is not, however, entitled to an order to cause the institutional kosher kitchen to be made to conform to his understanding of religious dietary laws. (Allenwood Prison Camp, Pennsylvania)

1982

U.S. Appeals Court
NUTRITION

Cunningham v. Jones, 667 F.2d 565 (1982). A prisoner's eighth amendment rights are not violated when he is served only one meal a day for fifteen consecutive days. The one meal furnished a day was sufficient to maintain normal health for the fifteen days involved. The jail cook testified and estimated the caloric contents of the noon meals at between 2,000 and 2,500 calories. (McCracken County Jail, Kentucky)

1983

U.S. Appeals Court
MEDICAL DIETS

Byrd v. Wilson, 701 F.2d 592 (6th Cir. 1983). A civil rights claim was made for indifference to medical needs. The Sixth Circuit Court of Appeals held that, even though deprivation of medical attention was for only a short period of time, the plaintiff inmate had alleged a cause of action under 42 U.S.C. Section 1983. The plaintiff, after being released from the hospital after one of several visits for stomach problems, was denied his medication and no special diet was provided to him (as ordered by the treating physician) for a period of two days. The inmate then requested transfer back to the hospital and this request was immediately granted.

Because the deprivation of medication and special diet was of a relatively short duration, the federal district court dismissed the complaint; the inmate appealed. The Sixth Circuit, relying on Estelle v. Gamble, 429 U.S. 97 (1976), reversed the lower court decision and remanded the case for further proceedings. (Kentucky State Penitentiary)

State Court
MEDICAL DIETS

Craven v. Richmond City, (Superior Court of CA, #207934, 1983). Diabetic awarded \$1,118,434 because city jail failed to provide three meals a day. A female arrested in Richmond City, California, was housed in the Richmond City Jail. Upon admission her husband notified jail personnel that she was diabetic, and that she required daily insulin injections. She was taken to a hospital each day, and a hospital physician notified jail staff in writing that she was to receive three meals each day, instead of the two meals which were being served to all prisoners.

The written notice was lost, and the prisoner received only two meals. After three days she was admitted to a local hospital by jail staff, where she lapsed into a coma. After a jury trial, the plaintiff was awarded a total of \$1,718,434, which was reduced by \$600,000, the amount of a previous settlement with the city. (City Jail, Richmond, California)

U.S. District Court
RELIGIOUS DIETS

Prushinowski v. Hambrick, 570 F.Supp. 863 (E.D. N.C. 1983). Denial of special diet is improper for religious inmate. A federal district court has ordered prison officials to provide Jewish inmates a diet consistent with their religious beliefs. Their failure to provide for the kosher food as alleged in this case was a violation of the prison's own policy statement.

The inmate plaintiff's health suffered because he legitimately refused to eat the food provided. His claims of cruel and unusual punishment were dismissed because the officials were not deliberately indifferent to his health needs. (Federal Correctional Institution, Butner, North Carolina)

1985

U.S. Appeals Court
NUTRITION

Hazen v. Pasley, 768 F.2d 226 (8th Cir. 1985). Prisoners brought action against state officers and the county sheriff for wrongful taking of property and constitutionally impermissible conditions of confinement and sought damages for excessive use of force allegedly employed by one state officer at the time of the arrest. The United States District Court entered the final judgment in favor of the defendants, and the prisoners appealed. In addition, while the father and son were both incarcerated in the jail, they were improperly denied clothing and food provisions. Although requiring the pretrial detainees to wash and dry their own clothes was not unconstitutional, forcing them to remain partially unclothed while waiting for their clothes to finish laundering was improper. They were not provided enough calories as required for an adequate diet, resulting in weight loss and mildly diminished health. Each was awarded \$100.00. (Phelps County Jail, Missouri)

U.S. Appeals Court
FOOD

Hoptowit v. Spellman, 753 F.2d 779 (9th Cir. 1985). Inmates brought an action challenging conditions of confinement in a state prison system. On remand, 682 F.2d 1237, the United States District Court entered judgment finding conditions in violation of the eighth amendment and ordered relief; the state appealed. The court of appeals held that: (1) the change of administration, resulting in defendants named in the action either leaving office or changing positions, did not warrant reopening the record on remand; (2) inadequate lighting, vermin infestation, substandard fire prevention, and safety hazards in the prison violated minimum requirements of the eighth amendment; and (3) the order for relief was overbroad in requiring provision of adequate food and clothing where there were no findings of inadequate food and clothing. (State Penitentiary, Washington)

U.S. District Court
SANITATION

Miles v. Bell, 621 F.Supp. 51 (D.C.Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy. Although there were certain violations of the health code in the food service in that maggots and weevils were occasionally found, the court found no constitutional violation. (Federal Correctional Institution at Danbury, Connecticut)

1986

U.S. Appeals Court
RELIGIOUS DIETS

Udey v. Kastner, 805 F.2d 1218 (5th Cir. 1986). A prisoner brought action to require prison officials to provide him with a special diet consistent with religious beliefs. The district court, 644 F.Supp. 1441, entered judgment for the prison authorities, and the prisoner appealed. The court of appeals held that probable proliferation of special religious dietary requests, and undue costs and administrative burdens resulting therefrom, implicated a governmental interest sufficiently strong to outweigh the prisoner's first amendment right to be provided with a special diet. The inmate's religious dietary demands would have placed an undue burden on the penal system to the extent that there was good reason not to provide him with his requested diet of organic fruits, juices, vegetables and meats, in addition to raw milk and distilled water. The evidence was substantial that such a diet would be administratively difficult to furnish, exceedingly expensive, compromising to security, and disruptive of the prison population insofar as it could lead to a proliferation of similar claims by other inmates. (Federal Correctional Institution, Texas)

1987

U.S. District Court
VARIETY

Gabel v. Estelle, 677 F.Supp. 514 (S.D. Tex. 1987). Inmates suffered no denial of their constitutional rights when, as indicated in their civil rights lawsuit, they were furnished peanut butter sandwiches as the sole nourishment during a lockdown. Prison officials responded to a non-violent work strike of over 150 inmates by locking all striking inmates in their cells without notice or hearing. The court found that the lock-down was imposed upon all striking inmates without partiality and was the kind of action prison officials were entitled to take in response to a confrontation with an inmate. In addition, the court also found no constitutional violation on the mere basis of the inmates' "distaste" for peanut butter. It added that "the strike itself may have been the cause of the limited fare." (Wynne Unit, Texas Department of Corrections)

U.S. Appeals Court
RELIGIOUS DIET

McElyea v. Babbit, 833 F.2d 196 (9th Cir. 1987). According to a federal appeals court, absent a finding of insincerity, prison officials are required to provide kosher food for an inmate unless security and budgetary considerations interface, said the court. The court ruled that inmates with sincerely held religious beliefs have a right to be provided with food sufficient to sustain them in good health that satisfies the dietary laws of their religion. The suit was filed by an inmate of the Arizona State Prison who claimed he had been denied his right to practice his religion because he was unable to obtain a kosher diet. Prison officials stated that the inmate's records had not arrived at the facility and doubted his religious convictions because they had learned that he had not kept to a kosher diet while previously incarcerated. While agreeing that it was appropriate for officials to consider the inmate's sincerity, the court found that their reliance on secondhand knowledge of his past behavior was not a reasonable method of determining religious commitment. (Arizona State Prison, Perryville, Arizona)

U.S. District Court
RELIGIOUS DIET

Ross v. Coughlin, 669 F.Supp. 1235 (S.D.N.Y. 1987). The court found that an Orthodox Jewish inmate's allegations that he did not receive nutritionally adequate kosher diet for ten weeks of his incarceration stated a cause of action against the state for failing to accommodate the right of a Jewish inmate to receive a diet consistent with his religious beliefs. (Downstate Correctional Facility, New York)

1988

U.S. Appeals Court
FOOD QUALITY
SANITATION

George v. King, 837 F.2d 705 (5th Cir. 1988). An inmate who awoke one morning with stomach cramps, diarrhea and nausea was helped to the infirmary after he had collapsed. The inmate was given medication by a doctor who told him to take the day off and stay in bed. Claiming that three to four hundred other inmates suffered the same symptoms on the same day, the inmate stated that he endured "great mental and physical pain for several days" because of "the food poisoning." The lawsuit, claiming only a single incident of food poisoning, which caused no permanent injury or serious medical complications was dismissed by the district court as "frivolous". This decision was upheld by the appeals court. The court ruled that, if prisoners "regularly and frequently" suffer from food poisoning with "truly serious medical complications as a result of particular, known unsanitary practices" and the authorities "without arguable

justification refuse to attempt remedial measures," a constitutional violation might be shown, but no matter how many prisoners are affected, a single incident of food poisoning is no constitutional violation. (Dixon Correctional Institute)

U.S. Appeals Court
RELIGIOUS DIET

Kahey v. Jones, 836 F.2d 948 (5th Cir. 1988). A female inmate who was dissatisfied with arrangements made by prison officials to accommodate her special diet filed a federal civil rights lawsuit. The plaintiff had told prison officials that her Moslem religion prevents her not only from eating products containing pork, but from eating any food cooked or served in or on utensils that have come into contact with pork or any pork by-product. She asked that the prison provide her with regular meals consisting of eggs, fruit and vegetables served with shells or peels, on paper plates. Officials tried to accommodate the inmate's religious beliefs by furnishing a protein substitute whenever pork was served with a meal and they identified on menus any pork or shellfish products in the dishes served and prepared some dishes, such as beans, both with and without pork. The federal appeals court ruled that fulfilling her requests would "require special food and individualized processing and containers in order to completely avoid pork-contamination," and would place an excessive burden on prison resources. The inmate also acknowledged that "other Moslems do not necessarily adhere to the same standard" and she was not deprived of free exercise rights in any other way. (Louisiana Correctional Institute for Women)

U.S. Appeals Court
SPECIAL DIET

Martinez v. Griffin, 840 F.2d 314 (5th Cir. 1988). A federal appeals court ruled that an inmate's suit for inadequate treatment for his peptic ulcer was frivolous and that the prison-provided diet had been adequate. Evidence clearly showed that the inmate had not suffered deliberate indifference to serious medical needs--there was evidence at the hearing that he was receiving adequate medication and treatment, that adequate foods were available in the prison diet for someone with a peptic ulcer, and that his complaints about the foods were based upon certain foods available to prisoners which he knew he should not eat. The court noted that this case is one of an increasing number of examples of attempts by prisoners to use the courts as a general grievance procedure to complain about whatever matters having to do with their incarceration they do not like. The court stated that if there were an effective way to assess a monetary sanction against the inmate, it would do so. However, the record indicates the prisoner has no money at all in a prison account. (Texas Department of Corrections)

U.S. District Court
SEGREGATION
SPECIAL DIET

U.S. v. State of Michigan, 680 F.Supp. 270 (W.D. Mich. 1988). The United States brought action against the state contesting the state prison's use of "food loaf" for prisoners in segregation units. The district court held that: (1) use of food loaf did not violate consent decree; (2) use of food loaf did not constitute cruel and unusual punishment; (3) due process did not require holding of disciplinary hearing prior to imposition of food loaf punishment; and (4) a policy permitting use of food loaf as punishment even when misconduct charge upon which that punishment was based had been dismissed was violative of due process. The federal district court found that the use of a "food loaf" to feed inmates in a segregation unit who had engaged in prohibited cafeteria behavior did not violate a consent decree entered into by prison, which required it to serve meals to prisoners in segregation which were "essentially the same" as meals served to the general population. The court noted that the content of the food loaf was essentially similar to content of normal prison meals, and was only fed to prisoners as a result of their negative conduct. Further, the food loaf was prepared from the same ingredients which made up regular prison meals, with its contents varying from day to day. However, the prison policy that allowed a hearing officer to continue an inmate's "food loaf" punishment, even though a misconduct charge was dismissed for "procedural reasons" violated prisoners' due process rights in that the policy increased the possibility of arbitrary punishment and erroneous deprivations. The food loaf is a substance prepared by grinding up and combining the various components of a regular prison meal. This substance is formed into a loaf and baked. The baked loaf is then tightly wrapped in plastic and served to the inmate without tray or utensils. All parties appear to agree that the caloric and nutritional content of the food loaf is substantially similar to the caloric and nutritional content of normal prison meals. At present, the Department's Policy Directive provides that: a prisoner housed in segregation may be immediately placed on the food loaf if he or she is observed engaging in any of the following behavior (1) Misuse of food, serving tray, or eating utensils; (2) Refusing or failing to return uneaten food, the serving tray, dishes or eating utensils to the door slot...; (3) Destroying a serving tray or throwing a tray or food; or (4) Using containers to hold or throw other substances, such as human waste products. (Southern Michigan Prison)

1989

U.S. District Court
SEGREGATION

Brooks v. Kleiman, 743 F.Supp. 350 (E.D. Pa. 1989). A prisoner brought a civil rights suit arising out of his incarceration in a restricted housing unit reserved for prisoners with disciplinary violations. The U.S. District Court found that the prisoner, who was incarcerated in a restrictive housing unit due to disciplinary violations, failed to show that

his constitutional rights were violated by the method of delivery of food to prisoners cells, visitation restrictions, and exercise restrictions. The food for prisoners in the restrictive housing unit comes from the kitchen in large containers and at the end of the cellblock, trays are prepared and carried to each prisoner in his cell. A commissioned officer on each shift inspects the food distribution as to its sanitary conditions and proper handling. (Graterford Prison, Pennsylvania)

U.S. Appeals Court
INVOLUNTARY
NOURISHMENT

Garza v. Carlson, 877 F.2d 14 (8th Cir. 1989). A Jewish inmate brought a civil rights action against prison officials. The U.S. District Court denied relief and the inmate appealed. The appeals court found that the prison policy prohibiting an inmate from worship in a minyan while he was in administrative segregation was reasonably related to an institutional security concern, and the Jewish inmate's rights were not violated by the threat of receiving involuntary nourishment while he was engaged in a religious fast. The preservation of the prisoner's health is a legitimate objective, and prison officials may take reasonable steps to accomplish that goal. (United States Medical Center for Federal Prisoners, Springfield, Missouri)

State Appeals Court
NUTRITION
PORTIONS

Sivak v. Ada County, 769 P.2d 1131 (Idaho App. 1989). A prison inmate filed a habeas petition alleging a denial of his eighth amendment rights due to conditions of confinement in the county jail. The district court upheld a judgment of the Magistrate, dismissing the inmate's petition for writ of habeas corpus, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's allegations that he had been inadequately fed during confinement in the county jail because his weight decreased by two or three pounds during a one-month period failed to allege dietary deprivation sufficiently serious to constitute cruel and unusual punishment. The eighth amendment, the court noted, "is not implicated by every inmate complaint about the conditions of confinement" nor should the courts be "super-administrators of the prison system." (Ada County Jail, Idaho)

1990

U.S. District Court
HEALTH STANDARDS
UTENSILS
SANITATION
SERVING

Adams v. Kincheloe, 743 F.Supp. 1393 (E.D. Wash. 1990). A state inmate brought a civil rights action, alleging that the manner in which a restricted diet was served to him amounted to cruel and unusual punishment. The district court found that the manner in which the inmate's disciplinary diet was served - "nutra-loaf" was dropped through the "cuff door" on the inmate's cell and onto floor, without tray or utensils, while inmate was forced to stand at back of cell - did not amount to cruel and unusual punishment; the loaf was wrapped in at least four layers of plastic wrapping, having inmate stand at back of cell was rationally related to desire to avoid his previously disruptive behavior, and the fact that there was nothing pleasant or dignified about having food dropped on floor or eating without utensils or tray, did not rise to the level of an Eighth Amendment violation. (Intensive Management Unit, Washington)

U.S. Appeals Court
FOOD QUALITY
NUTRITION
SEGREGATION
SPECIAL DIET

Burgin v. Nix, 899 F.2d 733 (8th Cir. 1990). An inmate brought an action under Section 1983 challenging a prison officials' failure to provide him with a hearing prior to placing him on incorrigible inmate status and serving him "sacked" meals. The U.S. District Court found that the prison policy created a liberty interest protected by the fourteenth amendment. On appeal, the court of appeals stated that the inmate had no cognizable constitutional right to either type of meal given the adequacy of both the "sacked" and "non-sacked" meals served at the prison. It also stated that the prison policy which permitted officials to serve "sacked" meals to prisoners on incorrigible inmate status did not create a liberty interest protected by the fourteenth amendment. (Iowa State Prison)

U.S. Appeals Court
EQUAL
PROTECTION
SPECIAL DIET

Dixon v. Fox, 893 F.2d 1556 (8th Cir. 1990). Prisoners brought a civil rights action alleging the violation of due process in the removal or the prison "diet line." Unsubstantiated incident reports stating that they had violated the diet-line rules by missing a diet-line meal were the basis for removing them, without a hearing, from the prison "diet-line" for thirty days. The U.S. District Court dismissed the complaint and the prisoners appealed. The appeals court affirmed the lower court's decision, finding that the prisoners did not have a liberty interest in remaining on the diet line. The court stated that Nebraska statute and prison regulations to the effect that food restriction was not to be used as a disciplinary measure did not create a liberty interest in remaining on the prison's "diet-line." (Nebraska State Prison)

U.S. District Court
DINING

Harris v. Murray, 761 F.Supp. 409 (E.D. Va. 1990). An inmate filed an action under a federal civil rights statute, asserting numerous allegations relating to conditions of confinement. On the defendants' motion for summary judgment, the district court found that the dismissal of the inmates various claims was warranted. The inmate's claim that he was occasionally forced to stand while eating due to insufficient seating space in the dining area did not state sufficient facts to warrant a finding of cruel and unusual punishment. (Nottoway Correctional Center, Virginia)

U.S. District Court
DENIAL OF

Hodge v. Ruperto, 739 F.Supp. 873 (S.D.N.Y. 1990). A former pretrial detainee brought a civil rights claim against police officers, commissioner and mayor alleging constitutional violation as a result of treatment before he was arraigned. The district court found that the claim that officers deprived the detainee of food and water for two and one-half days while confining him to an overcrowded unsanitary cell charged sufficiently flagrant conduct to allow reasonable inference that the conduct was attributable to municipal policy. The alleged deprivation allowed a reasonable inference of inadequate supervision which was deliberate indifference to constitutional rights.

The constitutional rights of pretrial detainees were not violated by the failure of police to allow him to contact family or attorney during prearrestment detention. A pretrial detainee does not have a constitutional right to a telephone call on completion of booking formality. Prearrestment detainees are entitled to adequate food, clothing, shelter, sanitation, medical care, and safety. The allegation by the pretrial detainee that he had to sleep on a steel frame without a mattress, that sanitation facilities were so filthy he was unable to use them and that he was denied access to necessary medical care stated a claim for violation of fourteenth amendment rights. (43rd Precinct, New York)

U.S. Appeals Court
RELIGIOUS DIET
SEGREGATION

Hunafa v. Murphy, 907 F.2d 46 (7th Cir. 1990). A Muslim inmate brought a Section 1983 action against prison officers and claimed that prison policies regarding the service of meals containing pork to inmates in disciplinary segregation violated his free exercise rights. The prison serves pork two or three days a week to inmates who are in disciplinary segregation. Eating pork is contrary to the tenets of Islam (as of orthodox Judaism). The prison does not serve special meals to Muslim inmates who are in segregation, however; instead, whenever it serves pork, it serves along with it a non-pork substitute of soup and bread. The meals are served in the prisoners' cells on plastic trays that are divided into compartments, with pork and potatoes in one compartment and the soup and the bread in two of the other compartments. The defendants candidly admitted, however that "while the trays are in transit, there is no guarantee that some of these food items may not run together. We do take precautions so that it does not happen, but it could happen." Fearing the contamination of the non-pork products by the pork products, the prisoner refused to eat any of the meals at which pork is served. The U.S. District Court granted summary judgment and dismissed the action and the inmate appealed. The appeals court, reversing and remanding, found that the fact issues precluded a summary judgment, and the determination of whether officers were entitled to immunity from damages liability did not have to be made until a more complete record was developed. (Wisconsin State Prison)

State Appeals Court
SPECIAL DIET
QUALITY

Smith v. Dept. of Corrections, 792 P.2d 109 (Or.App. 1990). A petition was brought for review of rules adopted by the Department of Corrections on the controlled feeding of inmates. The appeals court, stating that the rules were valid, found that the prison rules providing for the placement of inmates on "controlled feeding status," and substituting "nutra loaf" for regular meals, did not constitute cruel and unusual punishment. The prison rules provided for the placement of inmates on "controlled feeding status" if they throw or misuse food or human waste or fail to voluntarily return eating utensils and trays to staff after each meal. The placement of an inmate on controlled feeding status was not punishment, but rather a safety measure necessary to reduce the use of food, eating utensils and human waste as weapons against staff and others. Under the rules, the inmates on controlled feeding status are fed "nutra loaf," a product made from a combination of food items used in the preparation of mainline meals or medically assigned special diets using standardized portion sizes and nutritionally balanced recipes. The plaintiffs described "nutra loaf" as having the consistency and appearance of "dog food," stating that dog food is "at least intended to appeal to a dog's appetite." (Oregon State Penitentiary)

1991

U.S. District Court
QUALITY
SERVING

Beardsley v. Moore, 765 F.Supp. 560 (E.D. Mo. 1991). A state prisoner brought a civil rights suit against state prison officials, alleging cruel and unusual punishment regarding his classification within prison. The district court found that the service of meals in paper bags, as opposed to trays, while the prisoner was in a restrictive category, did not constitute cruel and unusual treatment. The inmate received food which was assembled on the same day it was served and the food was of the same quality of foodstuffs as the meals served to the other inmates. (Missouri State Penitentiary)

U.S. District Court
RELIGIOUS DIET

Cooper v. Rogers, 788 F.Supp. 255 (D. Md. 1991). An inmate who was an Orthodox Jew brought a Section 1983 civil rights suit for failing to provide him with a kosher breakfast. Cross motions for summary judgment were made. The district court found that denying the inmate a requested kosher breakfast did not violate the free exercise provision of the First Amendment since prison officials provided two kosher meals daily, kosher items were available on the regular prison menu, and a specially ordered kosher breakfast would cost between five and ten times more than the cost of the kosher items already available at breakfast. (Maryland Penitentiary)

U.S. Appeals Court
DENIAL OF

Cooper v. Sheriff, Lubbock County, Tex., 929 F.2d 1078 (5th Cir. 1991). An inmate brought a pro se Section 1983 action against jail officials, alleging an unconstitutional deprivation of food. The U.S. District Court dismissed the case for failure to state a claim, and the inmate appealed. The court of appeals found that the dismissal of the action was premature absent a copy of the regulation pursuant to which the jail officials allegedly acted in requiring the inmate to be fully dressed before his meals would be served; there was disagreement concerning the interpretation of the regulation. According to the court, the inmate satisfied his obligation to allege sufficient facts in his complaint to overcome the presumption of immunity. First, the inmate claimed that the defendants had acted outside the scope of their authority because neither the regulation nor the Eighth Amendment permitted the type of punishment they had imposed. Second, an official has no immunity when "the contours of the right [violated] were so clear at the time the officials acted that a reasonable official would have understood that what he was doing violated that right." It was also found that the assertion by the inmate bringing the pro se Section 1983 action that his "mental anguish" prevented his attending to the suit did not satisfy "exceptional circumstances" requirement for appointment of counsel, and the inmate's transfer to another prison rendered moot his claims for injunctive relief. (Lubbock County Jail, Texas)

U.S. District Court
DENIAL OF

Gardner v. Beale, 780 F.Supp. 1073 (E.D.Va. 1991), affirmed, 998 F.2d 1008. A prisoner brought a Section 1983 action against a warden and an intensive treatment center where the prisoner's unit was working, alleging violations of the department of corrections meal service manual. The defendants moved for summary judgment. The district court found that providing the prisoner with only two meals per day (brunch and dinner on Friday, Saturday, and Sunday) which were days the crew did not work, in violation of the corrections department meal service manual, did not constitute cruel and unusual punishment. Although there was an 18 hour interval between dinner and brunch, the prisoner suffered only mental anguish and the warden who instituted the meal policy did not act with a culpable state of mind. According to the court, the corrections department meal service manual provision that prisoners would receive three meals each day with a maximum of 14 hours between dinner and breakfast did not create a due process interest. (Southampton Intensive Treatment Center, Virginia)

U.S. District Court
RELIGIOUS DIET

Johnson v. Bruce, 771 F.Supp. 327 (D. Kan. 1991), affirmed, 961 F.2d 220. An inmate brought a Section 1983 action against prison officials. On the government's motion to dismiss, the U.S. District Court found that the service of undercooked chicken did not violate the inmate's right to be free from cruel and unusual punishment; it was an isolated occurrence, and there was no indication of deliberate indifference to the inmate's needs. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
SERVING
TEMPERATURE
SEGREGATION

Johnson v. Williams, 768 F.Supp. 1161 (E.D. Va. 1991). An inmate brought a civil rights action against prison officials, claiming his rights were violated during a prison lockdown. On the officials' motion for summary judgment, the district court found that the inmate's allegations that food provided during lockdown was inadequate and cold and that he was forced to remain in his cell while eating were insufficient to state an Eighth Amendment violation necessary to support a civil rights claim. The fact that the inmate was served cold bag lunches in his cell did not indicate that the meals were less than nutritious or served under unsanitary conditions. (Powhatan Correctional Center, Virginia)

U.S. Appeals Court
RELIGIOUS DIET

LaFevers v. Saffle, 936 F.2d 1117 (10th Cir. 1991). An inmate appealed from judgment of the U.S. District Court which dismissed his claims against prison officials who failed to provide him with a vegetarian diet. The court of appeals found that if the inmate's religious views requiring a vegetarian diet were sincerely held, he was entitled to a vegetarian diet even if other members of his religious sect did not adhere to a vegetarian diet, but the denial of a vegetarian diet to the inmate did not amount to cruel and unusual punishment where he was able to obtain extra servings of vegetables when they were available, was provided with food when the prison menu did not include vegetables, and was given three meals each day. (Oklahoma State Penitentiary, McAlester, Oklahoma)

U.S. District Court
FOOD QUALITY
FOOD
TEMPERATURE

Thomas v. Jabe, 760 F.Supp. 120 (E.D. Mich. 1991). An inmate brought a civil rights action against prison officials. The officials moved for summary judgment. The district court found that, in absence of evidence that the prison officials intended the prison personnel to serve prisoners still-frozen food, the officials were not liable on the prisoner's claim that such food violated his Eighth Amendment rights. (State Prison of Southern Michigan in Jackson)

1992

U.S. Appeals Court
RELIGIOUS DIET

Bass v. Coughlin, 976 F.2d 98 (2nd Cir. 1992). A prisoner's requests for meals prepared according to dietary laws of his religion were rejected, and he filed a federal civil rights suit against New York state prison officials, who moved for qualified immunity. The U.S.

District Court denied their motion, and the prison officials appealed. The court of appeals found that the New York state prison officials were not entitled to qualified immunity from civil rights liability concerning their rejection of the prisoner's requests in 1989 and 1990 for meals prepared according to dietary laws of his religion, noting that as early as 1975, the United States Supreme Court had established that prison officials had to supply a prisoner a diet that was consistent with his religious scruples. (Clinton Correctional Facility, Dannemora, New York)

U.S. District Court
FOOD QUALITY
HEALTH STANDARDS
KITCHEN
SANITATION

Islam v. Jackson, 782 F.Supp. 1111 (E.D Va. 1992). An inmate brought a Section 1983 civil rights suit against prison officials and a food service corporation alleging that service of contaminated food was cruel and unusual punishment. The defendants moved to dismiss for failure to state a claim. The district court found that the serving of one maggot-contaminated meal and serving meals under unsanitary conditions for 13 days was not cruel and unusual punishment, and the maggot-infested meal was not shown to have been served pursuant to impermissible corporate policy. Missing one meal did not deprive the inmate of basic nutritional needs, and the prison officials acted immediately to obtain food from another vendor after the contaminated meal was received and also provided appropriate medical care when the inmate became ill. In addition, the temporary service of food under unsanitary conditions did not present an immediate danger to the health and well being of inmates. (Westmoreland County Jail, Virginia)

U.S. District Court
SANITATION
SEGREGATION

Miles v. Konvalenka, 791 F.Supp. 212 (N.D.Ill. 1992). A prison inmate brought a suit alleging deprivation of his constitutional rights. The district court dismissed the action with prejudice. The court found that the discovery of a dead mouse in a food tray of a fellow inmate did not violate the inmate's Eighth Amendment rights; the deprivation to the inmate was minimal at most and prison officials did not act with deliberate indifference. In addition, denial of coffee with morning meals served to the inmate and others in the segregation unit, while not depriving the remainder of the prison population of coffee, was rationally related to legitimate penological goals of maintaining discipline and prison safety and therefore did not violate the inmate's equal protection rights. (Joliet Correctional Center, Joliet, Illinois)

U.S. Appeals Court
FOOD
SANITATION
TEMPERATURE

Wishon v. Gammon, 978 F.2d 446 (8th Cir. 1992). An inmate brought an action under Section 1983 alleging Eighth Amendment violations and denial of equal protection. The U.S. District Court entered an order granting the prison officials' motion for summary judgment, and the inmate appealed. The appeals court affirmed the decision. The inmate failed to establish that the infestation of his cell with insects and other vermin and the improper cleaning of his cell or the fact that he was allegedly routinely served cold food that was often contaminated with foreign objects violated his Eighth Amendment rights. There was evidence that the cells were sprayed for pests every month and would be sprayed more frequently on request by a prisoner, and that the inmate never used the opportunity provided to clean the cell himself. There was also no evidence that the food served was nutritionally inadequate or prepared in a manner presenting an immediate danger to the inmate's health, or that his health suffered because of the food. (Moberly Training Center for Men, Missouri)

1993

U.S. District Court
RELIGIOUS DIET

Rayes v. Eggars, 838 F.Supp. 1372 (D. Neb. 1993). An inmate filed a Section 1983 action claiming prison officials violated his religious beliefs by feeding him nutriloaf meat compound. On the defendants' motion for summary judgment, the district court found that feeding the inmate nutriloaf meat compound did not infringe upon the inmate's religious beliefs, even assuming the inmate had a sincere religious belief that he should avoid meat. The inmate never complained to prison officials that consuming the compound violated his religious beliefs, and telling the officials that he did not eat meat was not the equivalent of telling them he should not eat meat for religious reasons. (Nebraska State Penitentiary)

U.S. Appeals Court
DENIAL OF

White v. Gregory, 1 F.3d 267 (4th Cir. 1993), cert. denied, 114 S.Ct. 931. A state prisoner brought a pro se Section 1983 action, alleging an Eighth Amendment violation. The U.S. District Court dismissed the complaint as frivolous, and appeal was taken. The appeals court, affirming the decision, found that the inmate's allegation that he was receiving only two meals a day on weekends and holidays, while admitting that he received three meals a day at other times, was insufficient to allege an Eighth Amendment violation absent an allegation of deleterious physical or mental effects from the meal schedule. (Pruntytown Correctional Center, West Virginia)

1994

U.S. Appeals Court
RELIGIOUS DIET

Brown-El v. Harris, 26 F.3d 68 (8th Cir. 1994). An inmate brought a Section 1983 action claiming that his First Amendment free exercise rights were violated when he was

removed from a special night meal schedule for Muslim inmates who were subject to a daytime fast during the holy month of Ramadan. The U.S. District Court granted summary judgment for the prison officials and the inmate appealed. The appeals court, affirming the decision, found that the prison policy of removing from the special night meal schedule any Muslim inmate who broke the daytime fast did not restrict the inmate's religious freedom. The inmate alleged that there was an injury exception to the daytime fast and because he ate a daytime meal while he was injured he did not break the fast when he was removed from the schedule. However, there was no evidence offered by the inmate to support his assertion that his faith had an injury exception. (Potosi Correctional Center, Missouri)

U.S. District Court
RELIGIOUS DIET
SPECIAL DIET

Kurtz v. Denniston, 872 F.Supp. 631 (N.D.Iowa 1994). Inmates brought a civil rights action against a prison chaplain for violating their constitutional rights to free exercise of religion by denying their requests for "non-pork" cards to obtain pork-free meals in compliance with their religious dietary restrictions. On the chaplain's motion for summary judgment, the district court found that the inmates' claim for injunctive relief was moot after the prisoners were no longer subject to a policy that required membership in a specific religious group before an inmate could receive a "non-pork" card. Furthermore, the chaplain was entitled to qualified immunity, since the right to a religious diet was not clearly established. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. District Court
RELIGIOUS DIET

Messina v. Mazzeo, 854 F.Supp. 116 (E.D.N.Y. 1994). An arrestee brought a federal civil rights action against a correctional officer. The district court found that the allegation that the correctional facility intake officer refused to mark the arrestee as Jewish on an intake sheet and provide him with a proper identification card did not state a claim for a constitutional violation as there was no allegation that the arrestee requested kosher food and was denied that right. (Rikers Island, New York)

U.S. District Court
RELIGIOUS DIET

Muslim v. Frame, 854 F.Supp. 1215 (E.D. Pa. 1994). A pretrial detainee brought a Section 1983 action against county prison officials complaining about prison conditions. The prison officials moved to dismiss and for summary judgment. The district court found that the prison did not violate the Muslim inmate's First Amendment rights by serving him pork products. Undisputed facts showed that when meals containing pork were served, substitute or alternative foods were available to all inmates who did not eat pork for religious reasons. (Chester County Prison, Pennsylvania)

U.S. District Court
FOOD
TEMPERATURE

Prophete v. Gilles, 869 F.Supp. 537 (W.D. Tenn. 1994). A county jail inmate brought a civil rights action and the district court dismissed the complaint. The court found that the inmate was not subject to cruel and unusual punishment by the fact that food was transported from the kitchen to cells on carts, resulting in food being cold when it was served, despite the speculation of the risk the food could become contaminated with bacteria. (Shelby County Jail, Tennessee)

U.S. District Court
MEDICAL DIET
SPECIAL DIET

Taylor v. Anderson, 868 F.Supp. 1024 (N.D. Ill. 1994). An inmate brought a Section 1983 action against a prison dietician for failing to provide him with diabetic meals required for his condition. The district court found that the inmate stated a claim under Section 1983. The inmate had informed prison officials of his condition, complained about the nutritionally inadequate meals provided, met with the dietician, and still did not receive adequate diabetic meals. In addition, the inmate sufficiently alleged that the prison's failure to satisfy his dietary requirements threatened his serious medical needs to state a claim under the Eighth Amendment, where he alleged that the dietician threatened his health and endangered his life by failing to provide him with the required diet. (Joliet Correctional Center, Illinois)

1995

U.S. District Court
SANITATION

Robinson v. Il. State Corr. Ctr. (Stateville), 890 F.Supp. 715 (N.D.Ill. 1995). A prison inmate housed in a segregation unit sued prison officials alleging violation of his civil rights in connection with his conditions of confinement. The district court dismissed several elements of his suit, but found that his complaint that inadequate heating and cooling posed a risk to his health was actionable under § 1983. However, the inmate did not claim that he suffered injuries as a result of unsanitary conditions in the segregation unit and the court found that these claims were not actionable. The inmate alleged that the toilet area was unsanitary, there were roaches and bed bugs, and there was a lack of weekly bedding supplies; the court held that while these allegations stated unpleasant conditions, they did not rise to the level of a constitutional violation. The court also held that allegations that the prison's food preparation area was unsanitary did not present an immediate danger to the health and well-being of the inmate and thus failed to state an actionable claim. (Stateville Correctional Center, Illinois)

U.S. District Court
FOOD QUALITY
PORTIONS

Smith v. Harvey County Jail, 889 F.Supp. 426 (D.Kan. 1995). A pretrial detainee filed a § 1983 suit against jail officials alleging violation of his rights by the provision of inadequate medical care, improper diet, denial of access to a law library, and denial of outdoor exercise. The district court dismissed the case. The court held that serving plain but nutritious food did not violate the detainee's constitutional rights; the detainee had complained of portion size, the food selected and food preparation. (Harvey County Jail, Kansas)

U.S. District Court
DENIAL OF

Williams v. Coughlin, 875 F.Supp. 1004 (W.D.N.Y. 1995). A prison inmate sued a prison and officials under Section 1983 for a violation of the Eighth Amendment as a result of deprivation of food as punishment for a disciplinary infraction (refusal to return food trays). The district court found that there were genuine issues of material fact, precluding summary judgment for either the prisoner or the prison officials, as to whether deprivation of five consecutive meals over a period of two days was sufficiently serious to support a claim of Eighth Amendment violation. (Southport Correctional Facility, New York)

U.S. District Court
HEALTH
STANDARDS
SANITATION

Wilson v. Cook County Bd. of Commissioners, 878 F.Supp. 1163 (N.D. Ill. 1995). A pretrial detainee brought a Section 1983 action against detention facility officials and a county board of commissioners alleging due process violations. On the defendants' motions to dismiss, the district court found that the pretrial detainee's allegations that the detention facility served inadequate food under unsanitary conditions and that facility officials were aware of such conditions, and the fact that the conditions created an excessive risk to the detainee's health and safety stated a claim for violation of due process. (Cook County Jail, Illinois)

1996

U.S. District Court
MEDICAL DIET

Abdusch-Shahid v. Coughlin, 933 F.Supp. 168 (N.D.N.Y. 1996). An inmate sued prison officials, employees and medical personnel alleging he was denied proper medical treatment and that his Fourth Amendment rights were violated because his medical records were released without his consent. The district court granted the defendants' motion for summary judgment in part and denied it in part. The court found that the food service manager's removal of him from a special diet was not deliberate indifference to serious medical needs, noting that the manager recommended the physician remove the inmate from his diet program because the inmate was not eating his special meals. The court also found that an x-ray technician did not violate the inmate's Eighth Amendment rights by failing to warn him of the foreseeable risks of x-ray radiation. The court found that a nurse did not violate the inmate's Eighth Amendment rights by failing to record all of his visits in an infirmary log book, and that even if the inmate's medical records were improperly disclosed the action did not violate the Fourth Amendment. The court denied summary judgment for claims that the inmate's medical condition, a salivary stone, was serious and whether physicians and a nurse treated the inmate's medical condition with deliberate indifference because he had to wait almost three years for surgery. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
NUTRITION
QUALITY

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The inmate's allegations that food was rancid and nutritionally deficient were found to be sufficient to state a claim. (Cook County Jail, Illinois)

U.S. District Court
RELIGIOUS DIET

Davidson v. Scully, 914 F.Supp. 1011 (S.D.N.Y. 1996). A prisoner moved for a preliminary injunction in his suit against prison officials. The court refused to grant an injunction in response to the inmate's claims that the "nutrilof" served to him was not kosher, in violation of his First Amendment religious rights. Although the inmate alleged the loaves were not kosher, prison officials submitted evidence that the loaves were prepared under the supervision of two rabbis who certified them as kosher. (Auburn Correctional Facility, New York)

U.S. Appeals Court
NUTRITION
RELIGIOUS DIET

Eason v. Thaler, 73 F.3d 1322 (5th Cir. 1996). A Muslim prisoner brought a § 1983 suit against five correctional officials alleging violations of his constitutional rights during a prison lockdown. The district court granted summary judgment for the officials and the appeals court affirmed the lower court decision. The prisoner was one of many ordered into lockdown status for nearly 26 days following a potentially explosive disturbance in a recreation yard. During the lockdown the prisoner was only allowed to leave his cell for showers; meals, library books, medical assistance and all other necessities and services were brought to inmates' cells. The court ruled that the prisoner's right to practice his religion was not violated by the inclusion of pork in some of the meals served during the lockdown since prison officials had no reason to know that the prisoner was affiliated with the Muslim faith. (Smith Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
RELIGIOUS DIET

Jenkins v. Angelone, 948 F.Supp. 543 (E.D.Va. 1996). An inmate brought an action against prison officials alleging violations of the Religious Freedom Restoration Act (RFRA) and equal protection as the result of limitations imposed on his practice of the African Hebrew Israelite religion. The district court granted the defendants' motion for summary judgment, finding that the prison's failure to grant the inmate a Vegan diet in accordance with his religious beliefs, and by providing only one hour per week for religious worship, furthered a compelling governmental interest in the least restrictive means. The court noted that the inmate's requested diet, which was limited to fresh fruits, vegetables and nuts, would have caused nutritional problems in the prison setting. The court also noted that the inmate was in a

maximum security facility that was placed in lockdown status due to inmate disturbances, and as a result group meetings were limited. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
QUALITY

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The court found that material issues of fact as to allegations that food was spoiled and water was foul precluded summary judgment. (Oregon State Prison)

U.S. District Court
NUTRITION

Stewart v. Block, 938 F.Supp. 582 (C.D.Cal. 1996). An inmate brought a § 1983 action against a county sheriff alleging several constitutional violations while he was incarcerated. The district court granted summary judgment in favor of the sheriff. The court found that the inmate's failure to allege an injury as the result of his claim that he was denied meaningful access to a law library was fatal to his claim. The court found that the inmate was not entitled to a grievance procedure. The court held that the inmate's admission that the meals he was provided met his nutritional needs was fatal to his claim that the sheriff violated the Eighth Amendment by placing him on a disciplinary diet. (Los Angeles County Jail, California)

1997

U.S. Appeals Court
RELIGIOUS DIET

Ashelman v. Wawrzaszek, 111 F.3d 674 (9th Cir. 1997). A prisoner brought a § 1983 action against prison officials claiming violation of his right to free exercise. The district court entered judgment for the prison but issued an injunction directing the prison to allow the prisoner to observe religious holidays. The prisoners and prison appealed. The appeals court reversed and remanded, finding that the prison's policy of supplying Orthodox Jewish prisoners with one frozen kosher dinner supplemented with nonkosher vegetarian or non-pork meals violated the prisoners' free exercise rights. The court noted that reasonable alternatives existed, that the warden had conceded that the kosher meal could be supplemented with kosher foods at a modest cost, and that the prison accommodated the dietary requirements of other religious groups. The court also found that the district court's finding that prison officials prevented the prisoner from resting and fasting on holy days as required by Orthodox Judaism was not supported by any evidence. (Arizona State Prison Complex)

U.S. District Court
SANITATION

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting. The court held that the plaintiffs failed to show deliberate indifference or another basis for liability on the claims of current overcrowding, inadequate food preparation and storage, provision of medical services, personal visitation, hours and accessibility of legal visitation, legal materials and assistance, and outdoor recreation. The court found that although conditions relating to food preparation and storage remained inadequate, recent improvements including efforts to combat vermin infestation and allocating \$100,000 to replace a floor and make other repairs shielded the defendants from liability for deliberate indifference. (San Francisco Jail No. 3, California)

U.S. Appeals Court
FOOD
TEMPERATURE

Thaddeus-X v. Blatter, 110 F.3d 1233 (6th Cir. 1997). Inmates filed a § 1983 action against prison officials, alleging they had retaliated against them for litigating a separate civil rights action against a warden. The district court granted summary judgment in favor of the defendants. The inmates appealed and the appeals court affirmed in part, reversed in part, and remanded. The court held that serving an inmate cold meals in retaliation for exercising his right of access to courts could be significant enough to be actionable under § 1983 and that genuine issues of material fact precluded summary judgment on this issue. The court found that summary judgment was also precluded for the inmate's claim that he was caused appreciable pain or injury because he was allegedly transferred without justification to a filthy unit which housed mentally ill inmates in retaliation for assisting another inmate with a lawsuit. (State Prison of Southern Michigan)

U.S. District Court
SANITATION

Tucker v. Rose, 955 F.Supp. 810 (N.D. Ohio 1997). Inmates brought a claim against a prison warden, food service supervisor, and food service manager alleging Eighth Amendment violations based on serving inmates food tainted by rodents. The district court granted summary judgment for the defendants, finding that occasional rodent presence was not sufficiently serious for an Eighth Amendment claim. The court found that none of the defendants were deliberately indifferent to the situation, noting ongoing pest control measures at the facility including semi-monthly preventative measures and regular inspections. According to the court, rodents had been detected infrequently in the food service area, had never presented a significant problem at the prison food service area, and the food service supervisor

did not observe any evidence of rodents in connection with an allegedly tainted bag of food. (Lorain Correctional Institution, Ohio)

U.S. District Court
DENIAL OF

Warren v. Irvin, 985 F.Supp. 350 (W.D.N.Y. 1997). An inmate challenged his confinement in special housing that resulted from disciplinary determinations that were invalidated. The inmate had been found guilty of a disciplinary violation for attacking a corrections officer, but this determination was eventually reversed due to procedural errors. The district court held that the temporary loss of good-time credits and prison privileges, or confinement in a special housing unit for 161 days, did not implicate a liberty interest necessary to support a due process claim. The court also held that deprivations of food and water imposed on the inmate were not sufficiently serious to constitute cruel and unusual punishment under the Eighth Amendment. The inmate was deprived of one meal for violation of a requirement of returning trays and cups before receiving the next meal, and he was deprived of water because he was using it to flood the gallery. (Wende Correctional Facility, New York)

1998

U.S. District Court
NUTRITION
SEGREGATION
SPECIAL DIET

Brazil v. Bartlett, 998 F.Supp. 236 (W.D.N.Y. 1998). A prison inmate brought a pro se § 1983 action against prison officials after being placed in a cell with a plexiglass shield and being placed on a restricted diet. The court held that placement of the inmate in a cell with a plexiglass shield and imposition of a restricted diet after he threw feces at a prison employee did not violate the Eighth Amendment. The court found that the inmate had received all of the procedural protections he was due, and any defects in the initial disciplinary determination were cured by a rehearing. The court held that the restrictions were imposed in a good-faith effort to maintain prison discipline, as a response to the incident, and were not imposed maliciously and sadistically to cause harm. The inmate's restricted diet consisted of a "Nutraloaf" and raw cabbage, and was not cruel and unusual punishment according to the court as long as the inmate received nutritionally adequate food. (Elmira Correctional Facility, New York)

U.S. District Court
RELIGIOUS DIET

DeHart v. Lehman, 9 F.Supp.2d 539 (E.D.Pa. 1998). An inmate brought a § 1983 action against prison officials claiming denial of his requests for a special vegetarian diet, and that he not be required to wear leather shoes, infringed on his right to free exercise of religious beliefs. The district court granted summary judgment for the defendants on the basis of qualified immunity. The court held that the inmate's right to receive a highly specialized religious diet was not clearly established at the time they denied the inmate's request. The officials had consulted with the prison's administrative chaplain who, in turn, had sought information from a local Buddhist association. The court also found that the inmate's right to refuse to wear leather boots was not clearly established at the time his request was refused. The inmate had become interested in Buddhism and considered himself a follower of Mahayana Buddhism, which believes that it is improper to have contact with animal flesh, dead animals, or animal byproducts. The inmate had requested a strict vegetarian diet that was totally devoid of animal product or byproduct, garlic, onion and all dairy products. During the grievance process the inmate refused meal trays that contained animal products or byproducts and was eventually admitted to the prison infirmary for a neuromuscular problem caused by the peanut butter and rice diet that he had sustained over a six month period. He was then prescribed a vegetarian diet of no animal products, which he continued to receive until he was transferred to another facility. He was denied the diet after he was transferred. (SCI Greene, Pennsylvania)

U.S. Appeals Court
SERVING

Frost v. Agnos, 152 F.3d 1124 (9th Cir. 1998). A pretrial detainee brought a § 1983 suit against a sheriff, corrections officers and others alleging that he was subjected to unconstitutional conditions because of his disability. The district court entered judgment for the officers and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that, as a matter of first impression, denial of adequate handicapped-accessible shower facilities to the detainee who wore a leg cast and relied on crutches could support a § 1983 claim. The appeals court held that the detainee failed to establish a § 1983 claim that the method utilized to deliver food posed a significant safety risk to him, alleging that he slipped several times as he attempted to carry his food tray while balancing himself on crutches. The detainee never informed the officers that he was having trouble with his food tray because he relied on crutches, and the risk of having to carry his food tray while using crutches was not, according to the court, obvious enough to infer a subjective awareness of a substantial risk of harm. (Madison Street Jail, Maricopa County, Arizona)

U.S. Appeals Court
HUNGER STRIKE
FORCED FEEDING

Grand Jury Subpoena John Doe v. U.S., 150 F.3d 170 (2nd Cir. 1998). A person who was confined for contempt of court for refusing to testify before a grand jury despite being granted immunity. The contemnor brought a motion for his release. The district court denied the motion and he appealed. The appeals court affirmed, finding that confinement for civil contempt of court was coercive rather than punitive and its sole purpose was to compel the contemnor to provide the requested grand jury testimony. The appeals court held that a force-feeding order issued against the contemnor, who had started a hunger strike did not violate the contemnor's constitutional rights. The court noted that the institution in which the contemnor was confined was responsible for his care while incarcerated and there

was a compelling governmental interest for force-feeding the inmate. (U.S. District Court, Southern District of New York)

U.S. District Court
MEDICAL DIET

Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court found many violations of inmates' constitutional rights, including failing to provide prescribed medical diets. (Administration of Correction, Puerto Rico)

U.S. Appeals Court
RELIGIOUS DIET

Oluwa v. Gomez, 133 F.3d 1237 (9th Cir. 1998). A state prisoner filed a § 1983 action against corrections officials challenging their refusal to honor his request for a religiously- and dated diet. The district granted summary judgment for the prisoner on his claim for injunctive relief. The prisoner had initially claimed to be a "Nazarite Disciple" and asserted he was prohibited by the Bible from eating anything containing "dairy products, animal flesh, things that grow on vines (grapes or raisins, melons, cucumbers, squash, etc.) and poultry products." When asked by prison officials if there were other members of his Nazarite Disciple group the prisoner responded "Adam and Eve." The officials declined to honor the prisoner's request because they concluded that the prisoner was not part of a recognized religious group. After the prisoner filed suit, he gave notice for the first time that he practiced the Rastafarian faith. The district court discounted a Magistrate Judge's finding that the prisoner changed his religious affiliation in midstream and held that the prisoner was entitled to a special diet. The appeals court reversed and remanded, instructing the district court to give the officials an opportunity to respond to the prisoner's latest assertion that he is a Rastafarian. (Pelican Bay State Prison, California)

U.S. District Court
RELIGIOUS DIET
MEDICAL DIET

Ramsey v. Coughlin, 1 F.Supp.2d 198 (W.D.N.Y. 1998). An inmate sued corrections officials alleging that their denial of a kosher diet violated his constitutional rights. The district court granted summary judgment in favor of the officials, but the appeals court reversed and remanded. On remand, the district court granted summary judgment to the defendants. The court held that the inmate, who had not converted to Judaism, was not Jewish and thus was not entitled to a kosher diet. The prison rabbi had denied the inmate's request for a kosher diet for lack of evidence that he was Jewish. The court also found that denial of a vegetarian diet did not interfere with medical treatment ordered by a doctor. According to the court, the vegetarian diet had been ordered earlier when the inmate was in a county jail, and only because the inmate had refused to eat and not for any medical reason. (Southport Correctional Facility, New York)

U.S. District Court
FOOD TEMPERATURE

Simpson v. Horn, 25 F.Supp.2d 563 (E.D.Pa. 1998). An inmate brought a § 1983 action against a corrections commissioner and officials, alleging that conditions of confinement at an overcrowded facility violated his Eighth Amendment rights, and that a classification system for double-cell assignment violated the equal protection clause. The district court found that the alleged deficiencies in the facility were not cruel and unusual punishment, but that fact issues precluded summary judgment on the equal protection claim. The court questioned the officials' intent to cause racial segregation via double-celling, and ruled they were not entitled to qualified immunity with respect to that claim. The court noted that prison officials have the right, acting in good faith and in particularized circumstances, to take into account racial tensions in maintaining security, discipline, and good order in prisons and jails. The court found that housing two inmates in a cell designed for one inmate does not, per se, violate the Eighth Amendment proscription against cruel and unusual punishment, but it may if it results in deprivations of essential food, medical care, sanitation or other conditions intolerable for human confinements. The inmate had alleged that as the result of overcrowding, inmates were not provided with adequate furniture, cleaning supplies, laundry service, ventilation, bedding, clothing, seating, recreational equipment, or telephones. He also alleged that food was served cold 85% of the time and that the dining hall was not kept clean or free of vermin. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court
DENIAL OF

Spicer v. Collins, 9 F.Supp.2d 673 (E.D.Tex. 1998). A state prisoner brought a § 1983 action against prison officials and staff. The district court dismissed the case. The court held that the inmate failed to state a claim based on prison officials' alleged verbal threats, harassment and insults. The court found that the alleged threats were of such a magnitude that they constituted a substantial risk of harm to the inmate. The court found that the inmate failed to state a claim for failure to take action to protect him after he reported that correctional officers had made verbal threats to him. According to the court, the prisoner failed to state an actionable § 1983 claim for failure to provide reasonably adequate food, according to the court, when he missed one meal and had to work and take his medicine on an empty stomach, where he did not allege that the other two meals he received that day were nutritionally inadequate and did not allege that he suffered any harm as a result. (Stiles Unit, Texas Department of Criminal Justice- Institutional Division)

U.S. Appeals Court
DENIAL OF
NUTRITION
SEGREGATION

Talib v. Gilley, 138 F.3d 211 (5th Cir. 1998). A former state inmate brought a § 1983 action against prison officials alleging violation of his constitutional rights by withholding his meals on certain occasions. The district court dismissed the case as frivolous and the appeals court affirmed. The appeals court held that a prison regulation requiring prisoners being served meals in their cells while on lockdown status to face the wall on their knees with their hands behind their backs was reasonably related to legitimate penological interests in security and the safety of guards. The refusal of guards to serve meals to the inmate when he did not follow this procedure did not violate the Eighth Amendment. The court found that the inmate had also failed to show that his diet was nutritionally or calorically inadequate. (Texas Department of Criminal Justice)

1999

U.S. Appeals Court
DENIAL OF

Berry v. Brady, 192 F.3d 504 (5th Cir. 1999). An inmate brought a § 1983 action against a correctional officer alleging violation of his Eighth and Fourteenth Amendment rights. The district court dismissed the claims as frivolous and the appeals court affirmed. The appeals court held that the denial of eight meals over a seven month period did not violate his constitutional rights where he did not claim that he lost weight or suffered other adverse physical effects or was denied a nutritionally and calorically adequate diet, nor that his health was put at risk. The appeals court also held that prohibiting the inmate from visiting with his mother on one occasion did not amount to cruel and unusual punishment. (Stile Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
RELIGIOUS DIET

Denson v. Marshall, 44 F.Supp.2d 400 (D.Mass. 1999). A state prison inmate brought a civil rights action against prison officials claiming violation of the Free Exercise Clause of the First Amendment. Prison officials had denied the inmate's request to receive the equivalent of three days of food per month in the form of milk, bread, cereal, peanut butter, and jelly so that he could eat during particular hours of Muslim holidays. The district court denied the defendants' motion for summary judgment, noting that they apparently misunderstood the inmate's request and did not address it accurately in their presentation to the court. The court required the defendants to accommodate the inmate's request, or to file additional summary judgment materials with the court within sixty days. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
RELIGIOUS DIET

Rapier v. Harris, 172 F.3d 999 (7th Cir. 1999). A pretrial detainee brought a § 1983 action against a sheriff, county jail employees and a police detective claiming constitutional violations during his detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that although it is permissible to punish a pretrial detainee for misconduct while in pretrial custody, that punishment can be imposed only after affording the detainee some sort of procedural protection. The court held that the detainee's free exercise rights were not violated when he was denied his request for a pork free meal on three occasions, noting that it appeared that the denial was based on the unavailability of a non-pork meal and was at most a de minimis infringement in light of the more than 810 meals that were served to the detainee during his confinement. (Vigo County Jail, Indiana)

U.S. Appeals Court
DENIAL OF

Reed v. McBride, 178 F.3d 849 (7th Cir. 1999). A state prisoner brought a § 1983 action alleging that prison officials violated his Eighth Amendment rights by withholding food and life-sustaining medication from him while he was incarcerated. The district court entered summary judgment in favor of the defendants but the appeals court reversed and remanded. The appeals court held that the prisoner's medical condition was sufficiently serious to support an Eighth Amendment claim and that material fact issues existed as to whether the officials acted with deliberate indifference to the prisoner's serious medical needs. According to the court, depriving a prisoner doctor-prescribed medication that allegedly led to agonizing and extreme pain, internal bleeding and periods of unconsciousness, was a serious medical condition for the purposes of § 1983. The court found that depriving a prisoner of food may be so objectively serious as to support a claim of cruel and unusual punishment under the Eighth Amendment, when the amount and duration of the deprivation is considered. The inmate complained that every Friday for an unspecified period of time he was returned from treatment at a local hospital and was unable to retrieve his identification badge until the following Monday or Tuesday. Without the badge he was not permitted to receive food or medication from prison authorities. (Westville Correctional Facility, Indiana)

U.S. District Court
PORTIONS
MEDICAL DIET

Robeson v. Squadrito, 57 F.Supp.2d 642 (N.D.Ind. 1999). Inmates brought an action against a county and jail officials alleging violations of their Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court found that the failure of jail officials to give the inmate his hypoglycemic diet was not deliberate indifference where the inmate's blood sugar was tested daily in accordance with his physician's order, and no special diet was ordered because his sugar levels were normal. According to the court, the cumulative conditions of confinement in the crowded county jail did not rise to the level of deprivations required to find an Eighth Amendment violation, even though the inmate was required to sleep on a thin mattress on the floor, had one shower, was assaulted by another inmate, was not taken to a gymnasium, was given small servings of food, and was initially denied an "indigent pack" of hygiene items. (Allen County Jail, Indiana)

2000

U.S. District Court
RELIGIOUS DIET

Beerheide v. Suthers, 82 F.Supp.2d 1190 (D.Colo. 2000). Three state prisoners who were Orthodox Jews brought a § 1983 action against state prison employees for failing to provide them with kosher meals. The district court granted a permanent injunction against a proposed prison co-payment program that would have required the prisoners to pay 25 percent of the cost of their kosher diet. The court found that the proposed co-pay policy would place an unnecessary burden on the prisoners' First Amendment right to free exercise of religion. The court held that the state prison's budgetary considerations and its goal of preventing inmate abuse of religious diets were not rationally related to the proposed co-pay program and that the Jewish inmates did not have a viable alternative for observing a kosher diet. The court concluded that the cost of providing kosher meals had a de minimis effect on the prison's food service budget. Prison officials had testified that the cost of a kosher meal is between \$2.50 and \$4.50 and that the co-pay program would have required the prisoners to pay approximately \$90 per month. (Colorado Department of Corrections)

U.S. District Court
TEMPERATURE

Leach v. Dufrain, 103 F.Supp.2d 542 (N.D.N.Y. 2000). A state prison inmate brought a § 1983 action against corrections officials alleging constitutional violations. The district court granted summary judgment for the defendants. The court held that there was no evidence concerning allegedly cold cell conditions, such as the date, outside temperature, or a corroborating statement by another prisoner. The court found that the regulation of hair length was not gender discrimination. According to the court, the denial of hot food for two months as discipline for misconduct was not cruel and unusual punishment, absent a showing of nutritional inadequacy or immediate danger to the prisoner's health and well-being. (Franklin Correctional Facility, N.Y.)

U.S. Appeals Court
RELIGIOUS DIET

Love v. Reed, 216 F.3d 682 (8th Cir. 2000). A prison inmate brought a § 1983 action alleging violation of his First Amendment right to free exercise of religion because prison officials refused to provide food from the prison's kitchen on Saturday for consumption in his cell on Sunday. The federal district court entered judgment for the inmate and the appeals court affirmed. The appeals court held that the belief system of the inmate, who was a self-proclaimed adherent of the "Hebrew religion" and derived his beliefs from his own fundamentalist interpretation of the Old Testament, was a religion within the meaning of the First Amendment. According to the court the refusal to provide food substantially burdened the inmate's beliefs, which prevented him from working on the Sabbath, or eating food prepared by others on that day. The court noted that the option of fasting on the Sabbath was not a reasonable accommodation. The court found that the inmate's request presented no serious potential health risk since the foods requested by the inmate were not highly perishable. (Arkansas Department of Corrections)

U.S. District Court
DENIAL OF

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. According to the court, the detainee's allegation that he was denied a meal at the jail dining hall on one occasion because he was not wearing shoes, as required by jail policy, was insufficient to state a due process violation. (Avoyelles Parish Jail, Louisiana)

2001

U.S. District Court
FOOD

Carlyle v. Aubrey, 189 F.Supp.2d 660 (W.D.Ky. 2001). A former prisoner brought a § 1983 action against a county jail alleging Eighth Amendment violations. The district court granted summary judgment in favor of the defendants. The court held that the prisoner was not subjected to unconstitutional conditions of confinement, even though water service in his cell was broken, he was forced to sleep on the floor, and he was fed only a bologna sandwich. The prisoner had admitted that he was offered drinking water on at least two occasions and that officers brought in water to flush the toilet. The court noted that although forcing a prisoner to sleep on the floor for extended periods may amount to an Eighth Amendment violation, the temporary inconvenience of one night spent on the floor does not. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
SANITATION
TEMPERATURE

Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging constitutional violations, including unhealthful conditions and exposure to asbestos. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate was precluded from recovering for emotional or mental damages because he failed to allege a physical injury. The inmate alleged that he was subject to cold showers, cold food, unsanitary dishes, insect problems, lack of adequate clothing, and the presence of an open "cesspool" near his housing unit. (East Carroll Detention Center, Louisiana)

U.S. Appeals Court
RELIGIOUS DIET

Searles v. Van Bebbler, 251 F.3d 869 (10th Cir. 2001). A state inmate sued corrections officials and a prison chaplain asserting violation of his First Amendment right to free exercise of religion by denying him approval for a kosher diet. The district court entered judgment on a jury verdict awarding the inmate \$3,650 in compensatory damages and \$42,500 in punitive damages against

the chaplain, finding no liability on the part of the corrections officials. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the punitive damages award had to be vacated in light of the district court's instruction to consider actual damages, that the Prison Litigation Reform Act (PLRA) does not bar punitive damages, and whether punitive damages were warranted was a question for the jury on remand. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
TEMPERATURE
NUTRITION
RELIGIOUS DIET
MEDICAL DIET

Waring v. Meachum, 175 F.Supp.2d 230 (D.Conn. 2001). Inmates brought several class actions against prison administrators and correctional officers alleging constitutional violations during a lockdown. The actions were consolidated and the district court granted summary judgment in favor of the defendants. The court held that where a genuine emergency exists, officials may be more restrictive than they otherwise may be, and certain services may be suspended temporarily without violating the Eighth Amendment. The lockdown was precipitated by a series of prisoner assaults on staff and other prisoners. According to the court, the provision of cold food is not, by itself, an Eighth Amendment violation as long as it is nutritionally adequate and is prepared and served under conditions that do not present an immediate danger to the health and well-being of the inmates who consume it. The prisoners had been served primarily sandwiches for lunch and dinner, and cold cereal for breakfast, during an eight-day lockdown. The court noted that the diet was without fruits and vegetables, but that it was imposed for only a short period. According to the court, any failure to provide religious diets during the course of the eight-day lockdown did not violate the Eighth Amendment absent evidence of deliberate indifference. The court noted that one inmate's first meal was confiscated but future meals were delivered, often in an untimely manner, and that a second inmate missed two meals during the lockdown. The court held that a delay in delivering a medically-prescribed diet for six days during the lockdown did not violate the Eighth Amendment. The court found that refusal to allow prisoners to shower during the eight-day lockdown did not rise to the level of an Eighth Amendment violation, nor was failure to provide prisoners with changes of clothing during the lockdown. The court found no constitutional violation in the alleged failure to provide adequate heat the cellblocks during the eight-day lockdown during the winter. Temperatures in the cellblocks were at least 60 degrees, heat could not be controlled by individual officers, and officers promptly covered any windows that were broken by inmates. (Connecticut Correctional Institution at Somers)

2002

U.S. District Court
RELIGIOUS DIET

Allah v. Al-Hafeez, 208 F.Supp.2d 520 (E.D.Pa. 2002). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's two-month exclusion from religious services did not violate his First Amendment rights, in light of security and economic concerns. The prisoner had challenged a prison chaplain about the chaplain's teaching and the two had a disagreement, resulting in his exclusion from services for two months. The court also found no First Amendment violation in the prison's failure to hire a minister, or appoint a prisoner as a minister, for an additional Nation of Islam faith group, because of security and economic concerns. The court found that a prison regulation that prohibited group calisthenics in the prison yard was reasonably related to ensuring security and avoiding gang activity. Although the court found that there were genuine issues of material fact concerning the potential violation of the prisoner's free exercise rights when officials failed to provide entirely appropriate meals during Ramadan, the court concluded that the officials were entitled to qualified immunity because they did not know at the time that their conduct violated the prisoner's constitutional rights. The officials had attempted to observe Ramadan meal restrictions, but failed by including beans in the menu. (State Correctional Institution at Frackville, Pennsylvania)

U.S. Appeals Court
RELIGIOUS DIET

Beerheide v. Suthers, 286 F.3d 1179 (10th Cir. 2002). Three state prisoners who were Orthodox Jews brought a § 1983 action against prison officials based on the officials' failure to provide them with free kosher meals. The district court granted a permanent injunction and the officials appealed. The appeals court affirmed, finding that failure to provide free kosher meals violated the First Amendment, and that a proposal under which the prisoners would be required to make a 25% co-payment for the cost of providing such meals was not rationally related to the legitimate penological concerns of cost and abuse. The court also found that the officials' alternative proposals that the prisoners buy their kosher meals at the prison canteen, or have the Jewish community provide the meals, were not reasonable. (Freemont Correctional Facility, Colorado)

U.S. District Court
SANITATION
SERVING
NUTRITION

Drake v. Velasco, 207 F.Supp.2d 809 (N.D.Ill. 2002). An inmate sued county corrections officials and a food service company under § 1983, alleging failure to provide him with sanitary meals. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations supported Fourteenth Amendment claims and a claim of deliberate indifference under § 1983. The court found that the inmate sufficiently alleged sufficient injury. The inmate alleged that the food service company's preparation was so unsanitary as to pose both an immediate risk to the inmate's health, and that the food served hindered his recovery from his ulcer, cirrhosis of the liver, and Hepatitis B and C. The inmate alleged that unsanitary conditions included serving meals on trays that contained spoiled food from previous meals, and inadequate supervision of employees that resulted in improper handling, preparation and sterilization of equipment. (Cook Co. Jail, Illinois, Aramark Food Services)

U.S. District Court
RELIGIOUS DIET

Ephraim v. Angelone, 313 F.Supp.2d 569 (E.D.Va. 2003). A state prison inmate who was a Charismatic Christian brought a suit claiming that a prison violated his constitutional rights by failing to use his new religiously-inspired name and to honor his dietary requests. The district court entered judgment in favor of the prison. The court held that the inmate's equal protection rights were not violated when he was denied a vegetarian diet his religion allegedly required, because there were no other members of his religion in his prison that were treated differently, nor was there any showing of intentional discrimination. The court found that the strict scrutiny test set forth in the Religious Land Use and Institutionalized Persons Act (RLUIPA) was not required because there was no showing that the prison was receiving federal funding, or that the burden imposed on the inmate affected interstate commerce. The court also held that the inmate's right to free exercise of his Charismatic Christian religion was not violated when the prison declined to completely accommodate his dietary request for raw vegetables, fresh fruit, nuts, honey, whole wheat bread, cheese and grains; it was sufficient for the prison to offer the inmate a vegetable option in lieu of meat main courses, in the interest of controlling costs. (Lunenburg Correctional Center, Virginia)

U.S. Appeals Court
RELIGIOUS DIET

Love v. McCown, 38 Fed.Appx. 355 (8th Cir. 2002). A state prison inmate brought a § 1983 action seeking to compel corrections officials to provide him with a kosher diet. The district court granted preliminary injunctive relief and ordered prison officials to deposit \$15 weekly deposits into the inmate's prison account for use in purchasing kosher food items. The appeals court upheld the preliminary injunction, noting it was prospective in nature, under the provisions of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). (East Arkansas Regional Unit, Arkansas Department of Corrections)

U.S. Appeals Court
RELIGIOUS DIET

Madison v. Riter, 355 F.3d 310 (4th Cir. 2003). A state prisoner brought an action against prison officials and others under the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging denial of his requests for kosher meals. The district court found that the applicable section of RLUIPA violated the Establishment Clause and the prisoner appealed. The appeals court reversed and remanded, finding that the RLUIPA section did not violate the Establishment Clause. The court found that the statute had the legitimate secular purpose of minimizing governmental burdens on religious exercise, and did not impermissibly advance religion. (Virginia Department of Corrections)

U.S. District Court
NUTRITION
SEGREGATION

Myers v. Milbert, 281 F.Supp.2d 859 (N.D.W.Va. 2003). A state prisoner brought a pro se action against corrections officers, alleging that they violated his rights by inappropriately restraining him for 20 hours on a stretcher, and feeding him a "nutra-loaf" diet for three days. The district court granted summary judgment in favor of the officers, finding that the prisoner did not suffer from a serious medical condition as a result of being restrained, and that the disciplinary nutra-loaf diet did not violate the prisoner's Eighth Amendment rights. The court noted that the inmate had assaulted a corrections officer and kicked a door. After being placed on the restraint stretcher, called a "stokes basket," the inmate's handcuffs were loosened and he was given numerous bathroom breaks, medications, and food and liquids. Although the prisoner alleged adverse effects from eating the nutra-loaf--vomiting, frequent bowel movements and burning in the chest and throat--the officers were not advised by medical personnel to cease serving the prisoner the disciplinary diet. (Northern Regional Jail and Correctional Facility, West Virginia)

U.S. District Court
RELIGIOUS DIET

Omar v. Casterline, 288 F.Supp.2d 775 (W.D.La. 2003). A detainee brought a *Bivens* suit alleging that federal prison officials subjected him to an unconstitutional search and failed to accommodate his religious needs. The district court held that a body cavity search conducted upon the detainee's arrival at a federal institution did not violate the Fourth Amendment, even though a female officer was present and officers allegedly ridiculed the detainee during the search. The district court denied summary judgment for the defendants on the detainee's religious claims. The detainee alleged that he informed the facility chaplain about his dietary restrictions, was served pork, could not see a clock from his cell, and was misinformed about the starting date of Ramadan. (United States Penitentiary, Pollock, Louisiana)

U.S. Appeals Court
NUTRITION

Phelps v. Kapnolas, 308 F.3d 180 (2nd Cir. 2002). A state inmate brought a § 1983 action alleging violation of his Eighth Amendment rights resulting from his placement on a nutritionally inadequate diet. The district court dismissed the complaint. The appeals court reversed and remanded with instructions. The court held that the inmate stated an Eighth Amendment violation with his allegations that prison officials deprived him of a nutritionally adequate diet for 14 days, and that they knew this deprivation was likely to inflict pain and suffering. (Southport Correctional Facility, New York)

U.S. Appeals Court
MEDICAL DIET
PORTIONS
COMMISSARY

Thompson v. Gibson, 289 F.3d 1218 (10th Cir. 2002). A state inmate brought a § 1983 action against prison officials, seeking monetary damages and injunctive relief for alleged Eighth and Fourteenth Amendment violations. The district court dismissed the action as frivolous. The appeals court dismissed the appeal, finding that the inmate's claim that prison officials were deliberately indifferent to his serious medical need for adequate portions of food was not actionable under the Eighth Amendment. The court noted that the record established that the prison was providing the inmate with a nutritionally adequate diet and doctors disagreed as to whether the inmate should receive double food portions. The appeals court found no equal

protection violation, as alleged by the inmate, because inmates with funds were able to supplement their diet with purchases from the prison commissary, while indigent inmates were not. (Oklahoma State Penitentiary)

U.S. District Court
DENIAL OF
NUTRITION
PORTION
SEGREGATION

Wilson v. Vannatta, 291 F.Supp.2d 811 (N.D.Ind. 2003). A state prison inmate brought a § 1983 action against corrections officials, seeking damages and injunctive relief. The district court held that the inmate stated claims for excessive use of force, deliberate indifference to his serious medical needs, and Eighth Amendment violations resulting from deprivation of food and exercise. The inmate alleged that a doctor had prescribed a pain reliever, muscle relaxer, and physical therapy for his medial problems, but that a prison official canceled his treatment because the prison could not afford the cost. The inmate alleged that prison lockup unit staff deprived him of food and recreation, gave him rotten food, reduced his ration every day, and gave him trays with food missing. The inmate allegedly lost twenty-five pounds and suffered from stomach pain and headaches. (Miami Correctional Facility, Indiana)

2004

U.S. District Court
MEDICAL DIET

Carrion v. Wilkinson, 309 F.Supp.2d 1007 (N.D.Ohio 2004). A state inmate filed an action under § 1983 and the Americans with Disabilities Act (ADA), alleging that prison officials failed to provide him with proper insulin-dependent diabetic meals. The district court dismissed the action. The court held that the officials were not deliberately indifferent, because the officials told the inmate that his diet was a "self monitored diet," informed the inmate of available diabetic exchanges, provided him with insulin and other medications, and promptly responded to the inmate's requests. (Richland Correctional Institution, Ohio)

U.S. Appeals Court
RELIGIOUS DIET

DeHart v. Horn, 390 F.3d 262 (3rd Cir. 2004). An inmate filed a § 1983 action against corrections officials, alleging that his free exercise rights were violated by their refusal to accommodate his request for a special diet. On remand the district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed in part and reversed in part. The court held that denial of the inmate's request for a diet consistent with his Buddhist beliefs did not violate the inmate's Free Exercise rights because the inmates requested a diet free of pungent vegetables, which would have required special preparation of single servings and the special ordering of whole grain bread and soy milk, which would have been costly and burdensome. The court found that although the prison accommodated other religious diets with food already available at the prison, the inmate's equal protection rights were not violated because he was not similarly situated as Jewish and Muslim inmates. The court noted that the inmate's request posed a greater burden than the dietary accommodations given to the Jewish and Muslim inmates. The inmate was a practitioner of Mahajana Buddhism. (State Correctional Institution-Greene, Pennsylvania)

U.S. Appeals Court
RELIGIOUS DIET

Goff v. Graves, 362 F.3d 543 (8th Cir. 2004). State inmates brought a § 1983 action, alleging violation of their First Amendment rights because prison officials refused to permit inmates in lockup to receive food trays that were prepared for a banquet for inmates who were members of the prisoner-founded "CONS" religion. The district court ordered prison officials to permit CONS inmates in lockup to receive trays of banquet food. The officials appealed and the appeals court affirmed in part and reversed in part. The appeals court held that the officials did not violate the inmates' First Amendment right by denying the banquet trays to CONS inmates in lockup, and that the ban on delivering banquet food trays was reasonably related to legitimate penological interests. The appeals court denied the officials' request for declaratory judgment that would allow them to prevent inmates to participating in CONS activities, noting that an appeals court had held that CONS was a religion that was entitled to First Amendment protection. (Iowa State Penitentiary)

U.S. District Court
RELIGIOUS DIET

Hudson v. Maloney, 326 F.Supp.2d 206 (D.Mass. 2004). State prisoners brought a § 1983 action alleging that corrections officials violated their First Amendment right to free exercise of religion by refusing to allow them to practice their Muslim faith in accordance with their understanding of Islamic dietary requirements, and by banning possession of full-size prayer rugs. The district court granted summary judgment for the officials in part, and denied it in part. The court held that banning full-size Muslim prayer rugs, but allowing prayer towels, was justified by appropriate security concerns over the fire hazard and sanitation problems the rugs posed, and their potential use as a repository for concealed contraband. The court found that the officials were entitled to qualified immunity from liability for refusing to have meat prepared using the Halal dietary restrictions followed by some Muslims. Case law at the time provided that it was sufficient for prisoner authorities to provide a vegetarian or pork-free diet consistent with the Muslim faith, and the right to have meat prepared in a particular way was not clearly established. The court found a genuine issue of material fact, requiring further proceedings, as to whether the provision of meat prepared using the Halal dietary restrictions was cost prohibitive, in comparison with Kosher meals prepared for Jewish inmates, or other special meals prepared for inmates of other faiths. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
PRIVATE PROVIDER *Page v. Kirby*, 314 F.Supp.2d 619 (N.D.W.Va. 2004). A state inmate filed a § 1983 action challenging his conditions of confinement. The district court dismissed the complaint, finding that private corporations that provided food and medical services at a state prison were not subject to liability under § 1983, absent an allegation that the inmate's constitutional rights were denied because of a corporation's policy or custom. (Huttonsville Correctional Center, West Virginia)

U.S. District Court
SEGREGATION *Wrinkles v. Davis*, 311 F.Supp.2d 735 (N.D.Ind. 2004). Death row inmates at a state prison brought a § 1983 action in state court, alleging that a 79-day lockdown of the death row area violated their constitutional rights. The lockdown had been implemented after a death row inmate was killed during recreation, apparently by other death row inmates. The court held that ceasing, for security reasons, allowing religious volunteers into the death row unit for group religious services and for spiritual discussions during the lockdown did not violate the inmates' First Amendment right to practice their religion. (Indiana State Prison)

2005

U.S. District Court
SERVING *Atkins v. County of Orange*, 372 F.Supp.2d 377 (S.D.N.Y. 2005). Jail inmates brought a § 1983 action against a county and corrections officers, alleging indifference to their mental health needs and mistreatment. The defendants moved to preclude expert witness testimony and for partial summary judgment. The district court granted summary judgment in part and denied it in part. The court found that the alleged act of serving food to a jail inmate on a napkin or paper towel on one occasion did not amount to a constitutional deprivation. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. District Court
MEDICAL DIET *Baird v. Alameida*, 407 F.Supp.2d 1134 (C.D.Cal. 2005). A insulin-dependent diabetic inmate brought a civil rights action against state prison officials claiming they acted with deliberate indifference to his serious medical needs by requiring the prison to serve a "Heart Healthy" diet to all inmates and failing to make provisions for therapeutic outpatient diets. The district court granted summary judgment in favor of the officials. The court held that the inmate was provided with a diet that was medically appropriate for diabetics and that the diet had not been shown to be the cause of the inmate's diabetic complications. (Wasco State Prison, California Men's Colony, and Avenal State Prison, California)

U.S. Appeals Court
DENIAL OF FOOD *Rodriguez v. Briley*, 403 F.3d 952 (7th Cir. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging that they refused to let him out of his cell for meals and showers because he refused to comply with a rule that required prisoners to stow certain items while outside of their cells. The rule requires inmates to store certain of their belongings in a storage box in their cells, to enhance fire safety, facilitate cell searches, and otherwise promote safety and security. The inmate missed meals because he refused to comply with the rule. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that enforcing the stowage rule by forbidding exit from the cell was not cruel and unusual punishment, since the inmate had the option of simply complying with the rule. According to the court, the rule was a valid means of promoting the safety and security of the prison. (Illinois)

U.S. District Court
RELIGIOUS DIET *Shaheed-Muhammad v. Dipaolo*, 393 F.Supp.2d 80 (D.Mass. 2005). A prisoner brought a civil rights action against employees of a state corrections department alleging violation of his right to practice his Muslim religion. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the defendant failed to establish that the prisoner's religious beliefs were not sincerely held, noting that although the prisoner had a long history of pro se litigation, he might have been both litigious and religiously observant. According to the court, the fact that the prisoner first sought a pork-free diet and four months later sought a vegetarian diet could have suggested an evolution of his beliefs, and not "backsliding" or nonobservance of religious tenets. According to the court, summary judgment was barred by genuine issues of material fact concerning whether the denial of the prisoner's request for a vegetarian diet was reasonably related to legitimate penological concerns. The court also denied qualified immunity for the officials who provided a pork-free diet but allegedly refused his request for the vegetarian diet. (Massachusetts Correctional Institution, Cedar Junction)

2006

U.S. District Court
SANITATION
SERVING *Carr v. Whittenburg*, 462 F.Supp.2d 925 (S.D.Ill. 2006). A state prisoner brought a § 1983 action against prison officials, alleging retaliation for filing a prison grievance regarding food handling by the security staff and the inmate cell house workers. The court held that genuine issues of material fact as to the intent and motive of the prison officials precluded summary judgment. The grievance alleged that the Unit Superintendent allowed his security staff and the inmate cell house workers to act as food handlers in the absence of required medical staff approval and appropriate sanitation apparel, in violation of Illinois Department of Corrections policies.

(Menard Correctional Center, Illinois)

U.S. District Court
FOOD QUALITY

Dickens v. Taylor, 464 F.Supp.2d 341 (D.Del. 2006). A prisoner filed a civil rights action against various corrections defendants, alleging unlawful conditions of confinement and excessive force. The district court dismissed the claims. The court held that: (1) placement of the prisoner in isolation for not more than two months at a time did not implicate a liberty interest; (2) neither Delaware law nor Department of Corrections regulations created a due process liberty interest in a prisoner's classification within an institution, and the prisoner had no property or liberty interest in the prison classification program or his housing assignment; (3) the prisoner failed to state an equal protection claim based on the allegation that a majority of the inmates in the special housing unit were black; (4) the denial of the disciplined prisoner's television privilege did not give rise to an Eighth Amendment claim since television privileges did not constitute necessities; and (5) the failure to serve brand name cereals and cold fresh water during meal time were not an Eighth Amendment violation. (Delaware Correctional Center)

U.S. Appeals Court
DENIAL OF FOOD

Gillis v. Litscher, 468 F.3d 488 (7th Cir. 2006). A state prisoner brought a § 1983 claim against prison officials, alleging that a behavioral modification program imposed on him violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded, finding that fact issues precluded summary judgment. According to the court, there were fact issues as to whether the prisoner, who was subjected to a behavioral modification program, was denied the minimal civilized measure of life's necessities and whether prison officials acted with disregard of a substantial risk of serious harm to the prisoner. The appeals court opinion opened with the following statement. "*Stripped naked in a small prison cell with nothing except a toilet; forced to sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf'; and given just a modicum of toilet paper-four squares-only a few times. Although this might sound like a stay at a Soviet gulag in the 1930s, it is, according to the claims in this case, Wisconsin in 2002. Whether these conditions are, as a matter of law, only "uncomfortable, but not unconstitutional" as the State contends, is the issue we consider in this case.*" The facility is an all-segregation facility, designed to house recalcitrant inmates. At the time at issue in this case, the facility used a five-level system of inmate classification, with Level One being the most restrictive. All inmates were placed in Level One upon their arrival at the prison. (Wisconsin Secure Program Facility at Boscobel)

U.S. District Court
RELIGIOUS DIET

Madison v. Riter, 411 F.Supp.2d 645 (W.D.Va. 2006). A state prisoner brought an action against prison officials and others under the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging the denial of his requests for kosher meals. The district court found that the applicable RLUIPA section increasing the level of protection of prisoners' religious rights violated the Establishment Clause and the prisoner appealed. The court of appeals reversed and remanded. On remand, the defendants brought a motion to dismiss which was dismissed by the court. The district court held that RLUIPA was a valid exercise of Congress' Spending Clause authority and that Congress' use of its Spending Clause authority was in pursuit of "the general Welfare." The court held that the RLUIPA conditions were related to federal interests and that conditioning the award of federal corrections funds on a state's compliance with RLUIPA was not coercive. According to the court, the federal corrections funding conditions imposed upon states through RLUIPA did not violate the Tenth Amendment and the state waived its Eleventh Amendment immunity to the prisoner's claims for damages under RLUIPA. The court also held that the "common fare diet" available to prison inmates upon approval from the appropriate prison authorities would satisfy the inmate's religious dietary needs and allow him to celebrate Passover. (Bland Correction Center, Virginia)

U.S. District Court
RELIGIOUS DIET

Omar v. Casterline, 414 F.Supp.2d 582 (W.D.La. 2006). A detainee brought an action pursuant to *Bivens* and the Religious Freedom Restoration Act (RFRA), alleging that federal prison officials subjected him to an unconstitutional search and failed to accommodate his religious needs. The defendants moved for summary judgment and the court granted the motion. The district court held that: the warden of the federal penitentiary at which the detainee was held was not liable for alleged violations of the detainee's right to free exercise of religion; the detainee failed to show that officials served him pork in violation of his right to free exercise of religion; qualified immunity shielded the officials from liability to the extent that their alleged failure to inform the detainee that he was being served pork substitutes violated his right to free exercise of religion; prison officials did not violate the detainee's free exercise rights by not informing him of the time so that he could pray at appropriate times of day; officials' refusal to hold three of the detainee's meals during Ramadan did not violate his free exercise rights; allegations that prison officials mocked the detainee's religion at most asserted a de minimis violation of the detainee's free exercise rights; and, the detainee did not establish a violation of his rights under RFRA. According to the court, allegations that the Muslim detainee asked his case manager at the federal penitentiary for a clock so that he would know when to say his prayers, and that the case manager said "You think this is going to work?" after the detainee was praying, sufficiently alleged the case manager's personal participation in alleged violations of the detainee's right to

free exercise of religion. (United States Penitentiary, Pollock, Louisiana)

U.S. District Court
RELIGION DIET

Porter v. Caruso, 431 F.Supp.2d 768 (W.D.Mich. 2006). A state inmate filed an action alleging that prison officials violated his First Amendment free exercise rights by refusing to refer to him by his new legal name, and by denying his request to be placed on a kosher meal plan. The officials moved to dismiss and the district court held that dismissal of the inmate's exhausted claims was not warranted. The inmate asserted that he was an adherent of an ancient Egyptian religion known as Kemetic Spiritual Science, and that as part of his religious faith he legally changed his name. The inmate alleged that corrections officials repeatedly failed to comply with their own policy directives and forced him to refer to himself by his former name. The inmate also asserted that the dietary requirements of his religion are comparable to those observed in the Jewish faith and he requested to be placed on the kosher meal plan, but the officials denied his request. (Michigan Department of Corrections)

2007

U.S. Appeals Court
RELIGIOUS DIET

Baranowski v. Hart, 486 F.3d 112 (5th Cir. 2007). A Jewish inmate incarcerated in a Texas prison brought a cause of action under § 1983, challenging prison policies that affected his ability to participate in Sabbath and Jewish holiday services and to eat a kosher diet. He alleged that these policies violated his free exercise and equal protection rights, as well as rights accorded to him under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered an order granting summary judgment in favor of the defendants, and the inmate appealed. The appeals court affirmed, holding that: (1) prison policies on the availability of religious services to the less than 1% of the prison population practicing the Jewish faith, which resulted in the inmate's being denied weekly Sabbath and other holy day services when a rabbi or approved volunteer was not present, did not violate the inmate's free exercise rights; (2) prison officials' failure to provide kosher meals did not violate the inmate's free exercise rights; (3) it was not a violation of the inmate's equal protection rights for prison officials to consider the demand and needs of groups requesting access to the prison chapel; (4) refusal to allow the Jewish inmates to congregate for religious services when a rabbi or outside volunteer was not available did not place a "substantial burden" on the inmate's free exercise of religion; and (5) "compelling governmental interests" supported the decision by prison officials not to provide the kosher meals. According to the court, the inmate retained the ability to participate in alternative means of exercising his religious beliefs, including the ability to worship in his cell using religious materials and the ability to access the chapel and the lockers containing religious materials on certain days and times. The inmate had the option of receiving vegetarian or pork-free meals and prison officials had a legitimate governmental interest in running a simplified food service rather than a full-scale restaurant. The court found that it was not a violation of the Jewish inmate's equal protection rights for prison officials to consider demand and need of groups requesting access to the prison chapel, along with space and staffing limitations, in deciding where religious groups would be allowed to conduct their services, and the mere fact that other religious groups may have enjoyed greater access to the chapel than the Jewish inmates, who constituted less than 1% of the prison population, was not constitutionally impermissible. The court noted that there were "compelling governmental interests" within the meaning of RLUIPA, that supported the decision of the prison officials not to provide kosher meals to its Jewish inmates and to require them to chose vegetarian or pork-free meals instead; the administrative and budgetary interests at stake could not be achieved by any different or lesser means. (Huntsville Unit, Texas Department of Criminal Justice)

U.S. District Court
MEDICAL DIET

Foster v. Elyea, 496 F.Supp.2d 951 (N.D.Ill. 2007). A special administrator, on behalf of a deceased inmate, brought a § 1983 action against prison officials, alleging their failure to provide the inmate with prescribed medication, treatment, diet, or exercise opportunities hastened his death or caused him great emotional distress. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the allegations of the special administrator stated an Eighth Amendment claim that employees were deliberately indifferent to the inmate's serious medical needs. The administrator alleged that the employees knew that the inmate faced a risk of death if he did not receive his prescribed medication, treatment, diet, and exercise for his type two diabetes, high blood pressure, and congestive heart failure, but that department of corrections employees personally involved in delivering medical services to the inmate failed to provide those things to him. (Statesville Correctional Center, Illinois)

U.S. Appeals Court
SANITATION

George v. Smith, 507 F.3d 605 (7th Cir. 2007). A state prisoner sued prison officials under § 1983, alleging deprivations of his speech rights and deliberate indifference to his serious medical needs. The district court dismissed some of the claims and granted summary judgment for the defendants on the remaining claims. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that his health was placed at risk by an allegedly malfunctioning dishwasher that left particles of food on his plate at dinner failed to state an Eighth Amendment claim. The court found that the prisoner's allegations that a prison employee had failed to provide a purported atlas that he had ordered, on security grounds, were insufficient to state a First Amendment violation where the prisoner did not provide a description, title or other identifying information for the book. The court held that the prisoner's allegation that the prison refused to allow him to speak to the public at large by placing advertisements in newspapers was insufficient to state a claim for violation of his First Amendment free speech rights where the prisoner did not provide the content of the advertisements. (Wisconsin)

U.S. District Court
RELIGIOUS DIET

Guzzi v. Thompson, 470 F.Supp.2d 17 (D.Mass. 2007). A state prisoner brought a suit challenging the denial of his request for a kosher diet. The court held that the prisoner failed to show the likelihood of success on the merits of his claim that keeping kosher was a protected religious exercise under the Religious Land Use and Institutionalized Persons Act (RLUIPA) for an Orthodox Catholic, precluding preliminary injunctive relief. According to the court, the prisoner was not likely to succeed in demonstrating that a kosher diet, separate from

the practice of Judaism, was a protected religious activity under RLUIPA. On appeal (2008 WL 2059321) the appeals court reversed and remanded. (MCI-Shirley, Massachusetts)

U.S. District Court
TEMPERATURE
NUTRITION

Harrison v. Moketa/Motycka, 485 F.Supp.2d 652 (D.S.C. 2007). A pretrial detainee sued various prison officials and medical care providers under § 1983, claiming violations of a variety of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the detainee did not suffer a violation of his Fourteenth Amendment rights when he was allegedly served cold food and two nutritionally deficient breakfasts. According to the court, merely serving food cold did not present a serious risk of harm or an immediate danger to the health of the detainee, and while he had significant pre-existing health problems, there was no indication that those conditions were caused or exacerbated by the diet provided. (Alvin S. Glenn Detention Center, South Carolina)

2008

U.S. District Court
RELIGIOUS DIET

Bey v. Douglas County Correctional Facility, 540 F.Supp.2d 1194 (D.Kan. 2008). A prisoner brought an action against prison officials for violation of his constitutional rights. Following denial of his prior motion the prisoner filed a second motion for a preliminary injunction. The district court granted the motion, finding that the prisoner was entitled to a preliminary injunction requiring prison officials to provide him with Kosher food in accordance with his sincerely held Jewish faith. The court found that irreparable harm was shown because the prisoner's claim was for violation of his First, Eighth, and Fourteenth Amendment rights. According to the court, the harm to prison officials if the injunction was issued was de minimus, and there was no hardship to the public in view of the fact that the prison was under an agreement with a food supplier that carried Kosher foods. (Douglas County Correctional Facility, Kansas)

U.S. District Court
RELIGIOUS DIET

Campbell v. Cornell Corrections of Rhode Island, Inc., 564 F.Supp.2d 99 (D.R.I. 2008). A former inmate brought a § 1983 action against a privately-owned correction facility and corrections employees, alleging violations of his rights under the First and Eighth Amendments. The district court denied summary judgment in part. The court held that failure to serve the inmate a vegetarian diet consistent with his religious beliefs did not constitute an Eighth Amendment violation, absent an allegation that the prison failed to provide the inmate with food that was adequate in quantity, nutritional value or in any other respect. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison's refusal to provide the inmate a vegetarian diet consistent with his religious beliefs was reasonably related to legitimate penological interests. (Wyatt Detention Facility, Rhode Island)

U.S. District Court
RELIGIOUS DIET

Dean v. Corrections Corp. of America, 540 F.Supp.2d 691 (N.D.Miss. 2008). An Hawai'i inmate housed in a private correctional facility in Mississippi brought a pro se suit claiming violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate alleged that he was deprived of a diet that conformed with his religion and a magistrate had recommended that an injunction be entered ordering the facility to provide a religious diet to the inmate. The district court held that the Hawai'i Department of Public Safety was responsible for a program or activity that placed a burden on the inmate's exercise of his religion, and the court thus had jurisdiction to hear the inmate's RLUIPA claims because the state received federal financial assistance. The court noted that the Hawai'i Department of Public Safety entered into a contract with a private corrections corporation to take custody of various Hawai'i inmates, such that the corporation was an instrumentality of the Department. The court held that the inmate alleged and proved no more than a de minimis injury from violations of his right to free exercise of religion, and thus, was only entitled to nominal damages in his action. (Tallahatchie County Correctional Facility, Corrections Corp. of America, Mississippi)

U.S. Appeals Court
RELIGIOUS DIET

Fegans v. Norris, 537 F.3d 897 (8th Cir. 2008). A state inmate sued prison officials, alleging that they violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as his free exercise and equal protection rights, by enforcing a grooming policy and denying him Kosher meals. The district court entered judgment for the inmate with respect to the Kosher meals, but entered judgment for the prison officials with respect to the grooming policy. The inmate appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion in awarding nominal damages, as limited by PLRA, of \$1,500 for the prison officials' constitutional violation of failing to provide Kosher meals, which amounted to \$1.44 for each constitutional violation. The court also held that the district court did not abuse its discretion in declining to award punitive damages for the prison officials' constitutional violation of failing to provide Kosher meals. The district court accurately stated the legal standard for the award of punitive damages, but found that prison officials did not act with malice, and that punitive damages were not warranted to deter future unlawful conduct, because the officials already had instituted a policy for providing Kosher meals. (East Arkansas Regional Unit of the Arkansas Department of Corrections)

U.S. District Court
RELIGIOUS DIET

Holloway v. Bizzaro, 571 F.Supp.2d 1270 (S.D.Fla. 2008). A prisoner brought a pro se civil rights complaint pursuant to § 1983 on the claim that prison officials denied his requests for pork-free meals. The district court dismissed the case finding that the prisoner failed to allege any physical injury as a result of the alleged free exercise violation, as required to seek compensatory damages against the prison officials. (Miami-Dade County, Florida)

U.S. District Court
RELIGIOUS DIET

Hudson v. Dennehy, 538 F.Supp.2d 400 (D.Mass. 2008). Inmates in a state prison, who adhered to the religious teachings of Elijah Muhammad and the Nation of Islam, filed a civil rights action against the commissioner of the state department of correction, alleging violation of their First and Fourteenth Amendments and Religious Land Use and Institutionalized Persons Act (RLUIPA) and Massachusetts laws. Following a non-jury trial, the commissioner moved for judgment on partial findings. The court held that refusal to provide a daily Halal menu

to Muslim inmates substantially burdened the Muslim inmates' exercise of their religious beliefs and that the refusal did not further a compelling state interest. The court found that the use of a towel provided by the department of corrections for daily prayer did not substantially burden the Muslim inmates' ability to perform daily prayer. According to the court, a ban on the Muslim inmates' participation in obligatory weekly group prayer services while in a separate confined housing unit substantially burdened the inmates' practice of a core tenet of their faith. The court held that a ban on participation by the Muslim inmates confined in a separate housing unit in obligatory weekly group prayer services by closed-circuit television was not the least restrictive means of furthering a compelling State interest. (Massachusetts Correctional Institution-Cedar Junction)

U.S. Appeals Court
RELIGIOUS DIET

Koger v. Bryan, 523 F.3d 789 (7th Cir. 2008). A prisoner, who was a member of the Ordo Templi Orientis (OTO) group, which was associated with the Thelema religion, sued prison officials, alleging that they violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by denying him a non-meat diet. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court reversed and remanded. The court held that the request for a non-meat diet was a request rooted in sincerely held beliefs, even though OTO had no general dietary restrictions. According to the court, to the extent that officials denied the prisoner's requests because OTO had no general dietary restrictions, such denials violated RLUIPA. The court found that the requirement, that an OTO clergy member submit written verification of the prisoner's membership in OTO and its tenets, imposed a substantial burden on the prisoner's religious exercise, where OTO lacked clergy members as traditionally understood, and had no universal requirements that could be verified by its leaders, at least when it came to dietary restrictions. The court held that the orderly administration of the prison dietary system did not constitute a compelling governmental interest and that such a requirement was not the least restrictive means of achieving the officials' ends. According to the court, the prisoner's right to a non-meat diet was clearly established, as required for the prisoner to overcome the officials' qualified immunity defense. The court noted that the prison already served two diets that would have satisfied the prisoner's request, and they failed to show what effort would have been involved in providing him a meatless diet or how it would have hampered prison administration. (Pontiac Correctional Center, Illinois)

U.S. District Court
COMMISSARY
RELIGIOUS DIET

Kole v. Lappin, 551 F.Supp.2d 149 (D.Conn. 2008). A Jewish inmate filed a complaint against federal prison officials alleging that a reduction in the number of kosher-for-Passover food items available to inmates for purchase for the Passover holiday violated her First, Fifth, and Fourteenth Amendment rights. The district court entered judgment in favor of the defendants. The court held that the prison's limitation on the number of supplemental kosher-for-Passover foods available for purchase by Jewish inmates did not substantially burden the plaintiff's religious practice in violation of the First Amendment, where the prison provided her with two Seder dinners during Passover, and otherwise provided her with three kosher-for-Passover meals and a box of Matzoh each day during the eight days of the holiday. The court found that the differences between food available for inmate purchase on a special holiday list available between Thanksgiving and Christmas and the more limited list of kosher-for-Passover food available for purchase did not violate the plaintiff's right to equal protection. The court noted that the prison's stated penological interests in limiting a small group of inmates' access to special goods to avoid hoarding and illegal trade, and in the efficient financial operation of the prison commissary, were logically advanced by offering a smaller number of "best sellers" for sale on Passover. (Federal Correction Institution, Danbury, Connecticut)

U.S. District Court
DENIAL OF FOOD

Murphy v. Gilman, 551 F.Supp.2d 677 (W.D.Mich. 2008). A civil rights action was brought against state prison officials, raising claims arising from the death of a prisoner, who died from dehydration after a four-day period during which he received no medical care and little water and food. A jury found that certain defendants were deliberately indifferent to the prisoner's serious medical needs, the defendants were grossly negligent, and one defendant was liable for intentional infliction of emotional distress. The jury awarded \$250,000 in actual damages, and \$2,500,000 in punitive damages. The defendants moved for judgment as a matter of law, and to stay enforcement of the judgment. The plaintiff filed a motion for a new trial. The district court denied the motions, finding that evidence supported the finding that an official knew of the obvious risks to the prisoner. The court held that punitive damages of \$1,250,000 per prison official defendant was not constitutionally excessive for the dehydration death of a physically vulnerable prisoner, who was trapped without physical necessities or medical care for five days during a heat wave and who was awarded \$250,000 in actual damages. The court noted that evidence established that prison officials kept the prisoner's water turned off, knew that the prisoner was not drinking, and knew the prison was on a heat alert. (Bellamy Creek Corr. Facility, Michigan)

U.S. Appeals Court
RELIGIOUS DIET

Patel v. U.S. Bureau of Prisons, 515 F.3d 807 (8th Cir. 2008). A federal prisoner sued the Bureau of Prisons (BOP) and prison officials alleging that they violated his right to practice his Muslim religion in violation of the Equal Protection Clause, the Establishment Clause, the Free Exercise Clause, the Religious Freedom Restoration Act (RFRA), and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner alleged that prison officials failed to provide him with appropriate meals. The district court entered summary judgment for the BOP and the officials. The prisoner appealed. The appeals court held that the prisoner's ability to practice his religion was not substantially burdened in violation of the Free Exercise Clause, RFRA or RLUIPA. The court found that the officials did not violate the prisoner's equal protection rights. According to the court, limitations in dietary accommodations did not substantially burden the Muslim prisoner's ability to practice his religion, where the prisoner had an option of purchasing halal vegetarian entrees on days that allegedly inadequate kosher meat entrees were served. The court noted that the prisoner received money from work and family members and had not pursued alternatives such as requesting to be first in line at the food bar to avoid cross-contamination. (Federal Correctional Institution in Forrest City, Arkansas)

- U.S. Appeals Court
RELIGIOUS DIET *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008). A Muslim inmate brought a pro se civil rights action against state prison officials alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause and the Equal Protection Clause after he was denied a requested religious dietary accommodation. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court reversed and remanded. The court held that factual issues precluded summary judgment on the inmate's free exercise, RLUIPA and Equal Protection claims. The fact issues included the impact of accommodating the inmate's request for kosher meat diet and the availability of ready alternatives, the extent of the burden imposed on the inmate's religious activities by the prison's refusal to serve him the requested kosher meat diet, the extent of the burden that would be created by accommodating the inmate's request, and the existence of less restrictive alternatives. The court also found that material issues of fact existed as to whether the costs of providing a kosher meat diet to Muslim inmates in the prison justified different treatment of the Muslim inmate whose request for a kosher diet was denied, and that of Jewish inmates who received kosher or orthodox kosher meals. The court held that the prison's refusal to provide the inmate with a kosher meat diet implicated the Free Exercise Clause, given the inmate's sincere belief that he was personally required to consume kosher meat to maintain his spirituality. (Arizona Department of Corrections, Florence)
- U.S. District Court
RELIGIOUS DIET *Smith v. Bruce*, 568 F.Supp.2d 1277 (D.Kan. 2008). A Muslim prisoner brought a § 1983 action against a prison food supplier, alleging that the supplier violated his First Amendment freedom of religion rights by serving gelatin with an animal byproduct in a religious vegetarian diet. The district court denied the supplier's motion for summary judgment. The court held that summary judgment was denied by genuine issues of material fact as to the sincerity of the prisoner's religious beliefs and whether the supplier personally participated in the alleged First Amendment violation through policy or custom. The court noted that the Muslim prisoner was not required to show deliberate indifference on the part of the prison food supplier in order to establish a violation of his First Amendment freedom of religion rights via the supplier's alleged custom or policy of providing nonvegetarian gelatin to prisoners with religious diets, but rather that the alleged violation was an affirmative act rather than a failure to act. (Aramark Correctional Services, Hutchinson Correctional Facility, Kansas)
- U.S. District Court
RELIGIOUS DIET *Stanko v. Patton*, 568 F.Supp.2d 1061 (D.Neb. 2008). A pretrial detainee brought two actions against jail personnel alleging a number of constitutional violations. The district court granted summary judgment for the defendants. The court noted that the detainee "...is a white supremacist. He is also a prolific pro se litigator who makes a habit of suing jail and prison officials when he is charged with a crime. Those facts are central to understanding these related civil cases." The court held that the detainee's alleged belief in the Church of the Creator and "White Man's Bible" was not protected and the jail had valid reasons for denying the detainee's alleged religious dietary requests. (Douglas County Correctional Center, Nebraska)
- U.S. District Court
DENIAL
RELIGIOUS DIET *Thomas v. Northern*, 574 F.Supp.2d 1029 (E.D.Mo. 2008). A state inmate filed a § 1983 action against correctional officers alleging that they violated his constitutional rights. The district court granted summary judgment for the officers and denied in part. The court held that the correctional officers did not violate the inmate's Eighth Amendment rights by refusing to provide him with a replacement meal after he refused the meal initially offered to him. The inmate had refused the meal because it contained pork. The court noted that there was no evidence that the inmate ever told officials that he had a religious preference. (Southeast Correctional Center, Missouri)
- 2009**
- U.S. District Court
INVOLUNTARY
NOURISHMENT *Al-Adahi v. Obama*, 596 F.Supp.2d 111 (D.D.C. 2009). Aliens who were alleged enemy combatants engaging in voluntary hunger strikes while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved to enjoin measures taken as part of a forced-feeding program. The district court denied the motion. The court found that the detainees failed to show a likelihood that they would suffer irreparable harm in the absence of an order enjoining the government from using a restraint-chair in order to facilitate force-feeding them. The court noted that pursuant to the Military Commissions Act of 2006 (MCA), the district court lacked jurisdiction to consider the complaints of detained alleged enemy combatants. According to the court, the government officials who imposed various restraints on the detained alleged enemy combatants, including the use of a restraint chair, in order to facilitate force-feeding them in response to their hunger strikes, were not thereby deliberately indifferent to their Eighth Amendment rights. The court found that evidence that the detained alleged enemy combatants had assaulted medical staff and guards during attempts to force-feed them after the detainees engaged in hunger strikes, demonstrated that the government might suffer a substantial injury if the detainees' request for a preliminary injunction against the use of a restraint-chair to facilitate such feedings were granted. (U.S. Naval Base at Guantanamo Bay, Cuba)
- U.S. Appeals Court
RELIGIOUS DIET *Cardinal v. Metrish*, 564 F.3d 794 (6th Cir. 2009). A prisoner brought an action against a warden seeking monetary damages, as well as declaratory and injunctive relief. The prisoner asserted violations of the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the failure to provide him with kosher food which resulted in his not eating for eight days. The district court granted summary judgment in favor of the warden. The prisoner appealed. The court held that the warden was entitled to Eleventh Amendment immunity on the prisoner's claim seeking monetary damages for the alleged violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) for not providing him with kosher meals. According to the court, even though the state accepted federal funds for its prisons, RLUIPA did not contain a clear indication that receipt of federal prison funds was unambiguously conditioned on a state's consent to be sued for monetary damages. The court held that there was no evidence that the warden knew of and disregarded an excessive risk to the prisoner's health or safety, as required to support the prisoner's claim against the warden for deliberate indifference to his medical needs in violation of the Eighth Amendment based on failure to provide him with kosher food. (Hiawatha Correctional Facility, Michigan)

U.S. District Court RELIGIOUS DIET COSTS	<i>Dawson v. Burnett</i> , 631 F.Supp.2d 878 (W.D.Mich. 2009). A state prisoner, who was a practicing Buddhist, brought an action against prison officials arising out of the alleged denial of the prisoner's request to eat a strict vegetarian (vegan) diet. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's desire to eat a vegan diet was based upon or required by his Buddhist religious belief. According to the court, the prison officials' argument that a strict vegan menu was more costly than the vegetarian menu already available to the prisoner was irrelevant to demonstrating a legitimate penological interest, since prison officials already provided a vegan menu to those prisoners whose religious beliefs compelled such a diet. The court held that the State of Michigan, by accepting federal prison funds, did not waive Eleventh Amendment sovereign immunity from a monetary suit brought by the prisoner under the Religious Land Use and Institutionalized Persons Act (RLUIPA), arising out of his alleged denial of a strict vegan diet as a practicing Buddhist. The court found that the prisoner could not recover monetary damages against individual prison officials in their personal capacity under RLUIPA, since neither were recipients of federal prison funds and RLUIPA did not provide for the recovery. (Michigan Department of Corrections)
U.S. Appeals Court SEGREGATION	<i>Foster v. Runnels</i> , 554 F.3d 807 (9 th Cir. 2009). A female inmate brought a civil rights action against a prison official, alleging the official deprived her of 16 meals over a 23-day period in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered summary judgment for the official, and the inmate appealed. The appeals court reversed and remanded. The court held that the official's conduct in allegedly depriving the inmate of 16 meals over a 23-day period for the inmate's failure to remove a paper from the rear window of her cell was a sufficiently serious deprivation of a life necessity, as required to establish violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The court noted that the official's argument-- that the alleged deprivation was due to the inmate's personal choice not to comply with a prison policy-- failed to demonstrate how the inmate's failure to remove a paper from a window jeopardized her safety or security during in-cell feeding. The court found that the official was not entitled to qualified immunity because the inmate's right to adequate meals was clearly established, and the case law alerting prison officials to their obligations to provide inmates with adequate meals should have put the official on notice of her Eighth Amendment rights. (High Desert State Prison, California)
U.S. Appeals Court RELIGIOUS DIET	<i>Gallagher v. Shelton</i> , 587 F.3d 1063 (10 th Cir. 2009). A prisoner brought a § 1983 action against various prison officials alleging his right to free exercise of religion and equal treatment were violated. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that isolated acts of negligence, in which prison officials failed to approve the state prisoner's requests for religious accommodations in a timely fashion, did not amount to a violation of the prisoner's right to free exercise of religion. The court noted that on one occasion the prisoner requested fried food on a religious holiday and the request was approved one month after the holiday, and on another occasion the prisoner requested two sack lunch meal accommodations for days of religious fasting and the requests were approved two days after the days of fasting had already passed. The court found that prison officials' improper cleaning of serving utensils reserved for kosher food, by washing those utensils with non-kosher utensils, did not amount to a violation of the state prisoner's right to free exercise of religion. According to the court, the act amounted to a single violation of a kosher diet, not a prison policy, and the allegation showed only that the prison imperfectly implemented kosher requirements or were negligent in implementing a kosher diet, not that prison officials deliberately contaminated the kosher utensils. (Norton Correctional Facility, Kansas)
U.S. District Court DENIAL OF FOOD	<i>Gay v. Chandra</i> , 652 F.Supp.2d 959 (S.D.Ill. 2009). A state prisoner, who suffered from antisocial and narcissistic personality disorders, brought a § 1983 action against a psychiatrist who treated him in prison, alleging that conditions of confinement to which the psychiatrist subjected him violated the Eighth Amendment. The district court granted summary judgment in favor of the psychiatrist in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the cell where the prisoner was restrained naked was excessively cold, and as to whether the psychiatrist knew that the prisoner would in fact be restrained naked in excessively low temperatures. Similarly, the court found fact issues as to whether the psychiatrist's decision not to allow the prisoner to wear any clothing while he was restrained denied the prisoner a "civilized measure" of life's necessities, and as to whether the psychiatrist was deliberately indifferent to the fact that the prisoner was restrained without clothes. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the psychiatrist's denial of food to the prisoner while the prisoner was restrained for 32 hours constituted an Eighth Amendment violation. (Tamm Correctional Center, Illinois)
U.S. District Court EQUAL PRO- TECTION RELIGIOUS DIET	<i>Goodvine v. Swiekatowski</i> , 594 F.Supp.2d 1049 (W.D.Wis. 2009). A state inmate brought an action against a state, its department of corrections, and various prison officials, alleging that interference with the practice of his Muslim faith violated § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA) and state law. A screening of the complaint for frivolous claims was required under the provisions of the Prison Litigation Reform Act (PLRA). The court held that the inmate's allegations stated a claim against prison officials under RLUIPA. The court found that a rule that limited religious materials he could own to one soft cover text and that he was unable to practice his faith without his tariqah materials and additional religious texts did not violate the Free Exercise Clause. The court held that the denial of the inmate's request to purchase a Qur'an while in segregation, and the denial of the inmate's request for a halal diet did not violate the Free Exercise Clause. According to the court, refusal to provide sandwiches to the inmate to break fast did not violate RLUIPA, and prison officials' failure to "establish the Qiblah" for the inmate did not violate the Free Exercise Clause or RLUIPA. The court found that the inmate's allegations, that a prison chaplain discriminated against him by providing Christian inmates with free copies of the Bible and denied him an available free copy of the Qur'an, stated a claim against the chaplain under the Establishment Clause and Equal Protection Clause. The court held

that the inmate's allegations that prison officials modified meal schedules for Christians wishing to fast for religious purposes but not for Muslims, stated a claim against prison officials under the Establishment Clause and the Equal Protection Clause. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
RELIGIOUS DIET

Jova v. Smith, 582 F.3d 410 (2nd Cir. 2009). Prisoners brought a pro se action against prison officials alleging violation of their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of officials. The prisoners appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the prison's restrictions on the prisoners' practice of the Tulukeesh religion, which limited the practice to the privacy of the prisoner's cell and keeping a holy book with the prison chaplain from whom the prisoners' could seek permission to read it, served prison officials' compelling security and administrative interests, for the purposes of the prisoners' action alleging violation of their rights under RLUIPA. The court found that prison officials' refusal to comply with some of the prisoners' dietary demands, which were allegedly required by the prisoners' Tulukeesh religion, was the least restrictive means of satisfying the officials' compelling administrative burden, where the dietary requests were highly detailed and required specific foods (and portions thereof) on individual days of the week, and that such foods be prepared by Tulukeesh adherents. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officials could provide a less restrictive substitute for the religious alternative menu. Officials' refused to comply with their request for a vegan diet that did not include soybeans, as required by their Tulukeesh religion. (Shawangunk Correctional Facility, New York)

U.S. District Court
SPECIAL DIET

Marquez v. Quarterman, 652 F.Supp.2d 785 (E.D.Tex. 2009). A prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action complaining about the prison system's refusal to provide him with dentures. The district held that the prisoner's allegations were sufficient to state an Eighth Amendment "deliberate indifference to medical needs" claim under § 1983, where the prisoner complained about an inability to chew food, stomach cramps, gas, and spastic colon, which resulted in a loss of weight of 13 pounds since his arrival at the prison system. The court allowed the prisoner to proceed with his deliberate indifference claims against a food services officer, who purportedly denied him a soft food diet, despite the prescription for it. (Polunsky Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
MEDICAL DIET

Mastroianni v. Reilly, 602 F.Supp.2d 425 (E.D.N.Y. 2009). An inmate brought a § 1983 action against a sheriff and medical personnel at a county correctional center, alleging a violation of his Fifth, Eighth, and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied in part. According to the court, jail staff was not, in violation of the Eighth Amendment, deliberately indifferent to a known or obvious risk that the inmate would develop diabetes from an allegedly high starch diet, and staff was not deliberately indifferent to the inmate's medical needs when he developed diabetes while incarcerated. Prior to his incarceration, the inmate's physicians had advised him to observe a low-salt, low-fat diet. The inmate did not recall his physicians advising him that starches and sugars could increase his blood sugar. Upon discovery of the inmate's elevated blood sugar levels, he was placed on a diabetic diet, received daily blood glucose tests, and was prescribed diabetic medications. (Nassau County Correctional Center, New York)

U.S. Appeals Court
NUTRITION
RELIGIOUS DIET

Mays v. Springborn, 575 F.3d 643 (7th Cir. 2009). A prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleged retaliation for his complaints about the searches, denial of his request for dietary supplements which he considered to be religious necessities, alleged inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the prisoner failed to meet the burden of proving that the prison's asserted penological reason for denying dietary supplements was not legitimate. The prison had asserted that the supplements either posed security threats or were not part of the prison's procurement program. The court held that there was no evidence that the officials knew of and ignored any risk to the prisoner posed by his diet, as required to support his claim that the officials violated the Eighth Amendment because the food given to the prisoner lacked adequate nutrition. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RELIGIOUS DIET

Nelson v. Miller, 570 F.3d 868 (7th Cir. 2009). A Roman Catholic prisoner sued a prison chaplain in his official and individual capacities for alleged violations of his rights under the free exercise and establishment clauses of the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Illinois Religious Freedom Restoration Act (IRFRA). The district court entered partial summary judgment in favor of the chaplain, and, after a bench trial on the remaining issues, found against the prisoner on all counts. The prisoner appealed. The appeals court held that the Roman Catholic prisoner's practice of his religion, which compelled him to abstain from all meat on all Fridays and during Lent and to avoid the meat of four-legged animals, was substantially burdened under the First Amendment, RLUIPA, and IRFRA by the requirement that he document that his preferred diet was compelled by his religion. The court found that denial of the prisoner's request that he not be given the meat of four-legged animals did not constitute a substantial burden on his religious exercise for the purposes of the First Amendment, RLUIPA, and IRFRA since a regular diet would still be nutritionally adequate if all meat of four-legged animals were skipped, and thus the prisoner was not put to a choice between his religious beliefs and adequate nutrition. But the denial of a non-meat diet on Fridays and during Lent substantially burdened the prisoner's practice of his religion. According to the court, since the prisoner currently received a non-meat diet and there was no evidence that the prison intended to revoke the prisoner's religious diet, the prisoner's claim for injunctive relief was moot. The court noted that RLUIPA, which was enacted pursuant to the Spending Clause, could not subject state officials to suit in their individual capacities. (Tamms Correctional Center, Illinois)

U.S. District Court
RELIGIOUS DIET

Owens-Ali v. Pennell, 672 F.Supp.2d 647 (D.Del. 2009). A pro se state prisoner, a Moorish American National adherent, brought an action pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against prison officials, in their individual and official capacities, alleging that the officials violated his constitutional rights when they denied his request for a religious diet, and that the officials retaliated against him for his attempts to exercise his religious beliefs. The prisoner requested counsel. The court held that the prisoner's claims under § 1983 and RLUIPA for monetary damages against prison officials in their official capacities were essentially claims against the state, and thus those claims were barred by the state's Eleventh Amendment immunity. The court held that prison supervisory officials could not be held liable under § 1983 for alleged violations of the prisoner's constitutional rights in connection with his request for a religious diet absent a showing that those officials were aware of his allegations and remained "deliberately indifferent" to his plight. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
RELIGIOUS DIET

Ramsey v. Goord, 661 F.Supp.2d 370 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging due process violations in connection with a disciplinary hearing and violations of his constitutional rights relative to his temporary removal from a kosher cold alternative diet (CAD) program. The employees moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether a state prison correction officers' captain, correction officer, and/or prison counselor were personally involved in the temporary removal of the Jewish prisoner from a kosher cold alternative diet (CAD) program. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the Jewish prisoner's missing of more than 30 days of kosher meals during his temporary removal from a kosher cold alternative diet (CAD) program constituted more than a de minimus injury to the prisoner. The court also held that DOCS employees were not entitled to qualified immunity from the Jewish prisoner's § 1983 claim that his temporary removal from a kosher cold alternative diet (CAD) program violated his rights under the First Amendment's Free Exercise Clause, where it was clearly established that a prisoner was entitled to a diet consistent with his religious beliefs, and that such beliefs were protected under the Free Exercise Clause. (Southport Correctional Facility, New York)

U.S. Appeals Court
RELIGIOUS DIET

Rendelman v. Rouse, 569 F.3d 182 (4th Cir. 2009). A state prisoner brought an action against state prison officials in their official and individual capacities, seeking injunctive relief and damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983 based on the officials' refusal to make any accommodation for his kosher dietary restrictions. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court dismissed in part and affirmed in part. The appeals court held that RLUIPA did not authorize a claim for money damages against an official sued in her individual capacity when invoked as a spending clause statute. The court held that the prisoner's claim for injunctive relief under RLUIPA based on the state prison officials' refusal to make accommodations for his kosher dietary restrictions was rendered moot by his transfer to a federal prison. The court noted that even if the prisoner's claim was capable of repetition because there was a possibility that he could return to state prison if his appeal of a federal conviction was successful, the claim would not likely persist in evading judicial review, as the prisoner would have sufficient opportunity to re-initiate an action seeking injunctive relief if he returned to state prison. (Maryland Correctional Institution-Hagerstown)

U.S. District Court
RELIGIOUS DIET

Shepard v. Peryam, 657 F.Supp.2d 1331 (S.D.Fla. 2009). A pro se inmate at a county jail, who professed to follow the Muslim faith, brought a § 1983 action against a former county sheriff, the jail's director of program services, and the jail's former and current directors of food services, alleging that the defendants' acts or omissions abridged his First Amendment religious rights. The inmate sought preliminary injunctive relief. The district court granted the defendants' motion for summary judgment. The court held that the revocation of the inmate's Kosher diet due to his non-compliance with that diet did not constitute a violation of his First Amendment rights, and the inmate was not entitled to preliminary injunctive relief. (Monroe County Detention Center, Florida)

U.S. District Court
RELIGIOUS DIET
COSTS

Yaacov v. Collins, 649 F.Supp.2d 679 (N.D. Ohio 2009). A Jewish inmate brought a § 1983 suit alleging that his First Amendment rights to free exercise were violated when he was denied a Kosher meal plan for three years. The district court granted the defendants' motion for summary judgment, finding that the decision to restrict Kosher meals to prisoners registered as Orthodox Jews had a reasonable relationship to the legitimate penological interest of cost control for budgetary reasons. The officials asserted that to properly prepare Kosher meals would require expensive kitchens and that purchasing pre-packaged Kosher meals would cost \$7.00 per meal as compared to \$0.80 per main-line meal. The court noted that the policy did not exclude all available means for free exercise, but afforded the alternative of eating cereal, peanut butter, and fresh fruits and vegetables. (Ohio Department of Rehabilitation and Corrections, Mansfield Correctional Institution)

2010

U.S. Appeals Court
RELIGIOUS DIET

Abdulhaseeb v. Calbone, 600 F.3d 1301 (10th Cir. 2010). A state prisoner who followed the Islamic faith brought an action against prison employees and prison canteen workers under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983. The prisoner asserted claims challenging his conditions of incarceration. The district court dismissed several of the prisoner's claims for failure to exhaust administrative remedies and granted summary judgment in favor of workers and employees on the remaining claims. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the Islamic prisoner's claims against prison employees in their official capacities for violations of RLUIPA based on their denial of his dietary requests were not moot, even though the prisoner had been transferred away from

the prisons where some of the employees worked. The court noted that the reasons given for denying the prisoner's requests involved Oklahoma Department of Corrections (ODOC) policies, the director of ODOC had final policymaking authority for ODOC and remained a party to the litigation, the prisoner was still incarcerated in ODOC's custody and was subject to its policies, and a judgment in his favor could have required ODOC to modify those policies. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the denial of the prisoner's requests for a lawful Islamic diet substantially burdened his religious exercise. The court also found a genuine issue of material fact as to whether the denial of the prisoner's request for meat for a religious feast that complied with Islamic dietary laws substantially burdened his religious exercise. According to the court, forcing the Islamic prisoner to accept pudding and gelatin on his food tray on one occasion, which allegedly rendered all food on the tray contaminated and inedible for him, did not amount to a substantial burden on the prisoner's religious exercise in violation of RLUIPA. The court held that the state department of corrections' policy of spending money on nonreligious items but not on religious ones did not violate the Islamic prisoner's right to equal protection. (Oklahoma State Penitentiary, Great Plains Correctional Facility, Oklahoma Department of Corrections)

U.S. District Court
NUTRITION
QUALITY
RELIGIOUS DIET

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The court held that the prisoner's allegations were sufficient to state a colorable § 1983 claim that he was deprived of personal hygienic items and sanitary conditions in violation of the Eighth Amendment, where the prisoner alleged he was regularly deprived of toilet paper and soap, that he was only allowed to shower twice a week, that he was made to strip in dirty showers full of filth and insects, that the unit in which he resided was littered with food and urine and contained open sewers, and that he suffered illness as a result. The court found that the prisoner's allegations that the food he was provided lacked nutritional value and was of lesser quality than food provided to other inmates, that officers made trays of food from dirty food carts located next to inmate showers and that birds picked at the inmate's food while the carts were outside were factually sufficient to state a colorable § 1983 Eighth Amendment conditions of confinement claim. (High Desert State Prison, Nevada)

U.S. District Court
RELIGIOUS DIET

Ciempa v. Jones, 745 F.Supp.2d 1171 (N.D.Okla. 2010). An inmate brought claims against state prison officials under § 1983 for alleged violations of the First, Fourth, and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that prison officials did not violate the inmate's First Amendment right to free exercise of religion, RLUIPA, the inmate's due process rights, or equal protection, by denying him access to particular issues of a religious publication based on guidelines prohibiting publications that advocate terrorism, criminal behavior, racial, religious, or national hatred. According to the court, prison officials' failure to provide the inmate with a Halal diet did not violate his rights under First Amendment or RLUIPA, where the inmate failed to establish that such failure imposed a substantial burden on his religious exercise, since the inmate stated that his religious needs could be satisfied by the provision of a Kosher diet. (Dick Conner Correctional Center, Jess Dunn Correctional Center, Oklahoma)

U.S. Appeals Court
RELIGIOUS DIET

Colvin v. Caruso, 605 F.3d 282 (6th Cir. 2010). A state prisoner brought pro se action against prison officials, asserting that the prison's 16-day denial of kosher meals, multiple mistakes in administering the kosher-meal program, and the lack of Jewish services and literature at the prison, violated his constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's pro se claims for injunctive and declaratory relief under RLUIPA, challenging a particular prison's kosher meal program and the alleged denial of Jewish services and literature at the prison, were rendered moot by the prisoner's transfer to another prison. The court noted that the claims were directed specifically at the particular prison's policies and procedures, not at the state prison system's programs as a whole. The court found that the prison chaplain was entitled to qualified immunity from liability, where, consistent with his job function, he received the prisoner's request for kosher meals, checked the prisoner's eligibility, and was informed that the prisoner was a Muslim and therefore not eligible for kosher meals. Once the mistake was discovered, the chaplain and other prison officials worked as quickly as possible to ensure that the prisoner began receiving kosher meals. The appeals court held that the prisoner's pro se claims for injunctive and declaratory relief under RLUIPA, challenging his removal from a kosher meal program and his failure to be reinstated into the kosher meal program, were not rendered moot by his transfer to another prison, noting that the prisoner's non-kosher status traveled with him to the transferee prison. The court held that the prisoner's amended claims against prison officials, challenging his removal from a kosher meal program and his failure to be reinstated into the kosher meal program following his transfer to a different prison, were not futile, for the purpose of the prisoner's motion to amend. The court noted that the prisoner consistently stated his religious preference as Jewish throughout his incarceration, and he submitted numerous grievances concerning alleged violations of kosher practice by prison kitchen staff. (Michigan Department of Corrections, Alger Maximum Correctional Facility)

U.S. District Court
NUTRITION
RELIGIOUS DIET

Florer v. Bales-Johnson, 752 F.Supp.2d 1185 (W.D.Wash. 2010). A state prisoner brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against former and current food program managers for a Department of Corrections (DOC) and a registered dietician employed by a prison, alleging that the defendants violated his First and Eighth Amendment rights and his rights under RLUIPA in their creation of kosher and mainline diets. The defendants moved for summary judgment. The district court granted summary judgment. The court held that: (1) the kosher diet menus did not deprive the prisoner of

sufficient calories and nutrients to sustain him and maintain his health; (2) a Passover menu did not deprive the prisoner of sufficient calories and nutrients to sustain him and maintain his health; (3) provision of kosher food to the prisoner did not substantially interfere with his ability to freely exercise his religion, as would violate the First Amendment and RLUIPA; and (4) the use of a fortified fruit drink in lieu of milk did not violate the Eighth Amendment. (Washington State Department of Corrections)

U.S. Appeals Court
NUTRITION
FOOD QUALITY

Graves v. Arpaio, 623 F.3d 1043 (9th Cir. 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court
EQUAL PROTECTION
RELIGIOUS DIET

Green v. Tudor, 685 F.Supp.2d 678 (W.D.Mich. 2010). A state inmate brought a § 1983 action against four employees at a prison for claims arising from his access to a prison law library and the adequacy of the prison's food service. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate failed to exhaust administrative remedies prior to bringing his claim against an assistant librarian alleging denial of access to courts through a denied "call-out" request. The court found that the assistant librarian did not engage in retaliatory conduct against the inmate and did not deny the inmate equal protection. According to the court, the failure of the prison's assistant food service director to provide hot meals during a religious holiday observed by the inmate did not violate the inmate's right to equal protection, absent evidence that the director supplied prisoners of other faiths with hot meals during non-daylight hours. The court held that the assistant food service director did not coerce the inmate, an Orthodox Muslim, into participating in Jewish religious practices, and did not take any actions establishing a state religion, so as to violate the Establishment Clause of the First Amendment. The court held that the alleged denial by the prison's assistant food service director of adequate advance notice of meal substitutions, hot meals during non-daylight hours during a religious holiday, and adequate nutritional calories to the Muslim inmate was rationally related to legitimate governmental and penological interests of prison security and fiscal budgetary discipline, and thus the denials did not violate the inmate's First Amendment free exercise rights. The court noted that the inmate retained alternative means for practicing his Muslim faith, and granting requests for specialized diets would be expensive and would divert resources from other penological goals. (Muskegon Correctional Facility, Michigan)

U.S. District Court
DISCIPLINE
NUTRITION
SEGREGATION
SPECIAL DIET

Greene v. Esgrow, 686 F.Supp.2d 240 (W.D.N.Y. 2010). A state inmate filed a § 1983 action alleging that prison officials improperly executed a restricted-diet disciplinary sentence. The district court granted the officials' motion to dismiss. The court held that imposition of a forty-two meal restricted-diet disciplinary sentence did not amount to cruel and unusual punishment, in violation of the Eighth Amendment, absent a showing that the food that inmate was given was nutritionally inadequate, or that his health was adversely affected or jeopardized by his being placed on the restricted diet. (New York State Department of Correctional Services, Southport Correctional Facility)

U.S. Appeals Court
SPECIAL DIET

Little v. Jones, 607 F.3d 1245 (10th Cir. 2010). A state prisoner, who was a Seventh Day Adventist, brought a § 1983 action against the Oklahoma Department of Corrections (ODOC) employees, alleging that employees violated his constitutional rights in denying him a vegan diet. The district court granted the defendants' motion to dismiss the complaint for failure to exhaust administrative remedies, and denied the prisoner's motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that, under the Oklahoma Department of Corrections (ODOC) grievance procedures, the Administrative Reviewing Authority (ARA) exceeded its authority when it rejected the prisoner's grievance appeal regarding his claim to a vegan diet as part of his religious practices because it contained multiple issues, thereby preventing the prisoner from completing the grievance process. According to the court, the prisoner's failure to exhaust his administrative remedies with regard to the vegan diet claim, in accordance with PLRA's exhaustion requirement, would be excused, and the prisoner could pursue that claim in his § 1983 action against ODOC employees. (Oklahoma Department of Corrections, Mack Alford Correctional Center)

U.S. District Court
KITCHEN SANITATION
PRIVATE PROVIDER

Smith-Bey v. CCA/CTF, 703 F.Supp.2d 1 (D.D.C. 2010). A District of Columbia inmate brought a § 1983 action against a prison, the private corporation that ran the prison, and a food services company, alleging the prison's kitchen was so poorly maintained and infested with vermin that being forced to eat food prepared there amounted to cruel and unusual punishment in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion. The court held that the two instances in which the inmate discovered cockroaches in his food, "while certainly unpleasant," did establish an Eighth Amendment violation. (Correctional Treatment Facility, Washington, D.C.)

U.S. District Court
SANITATION

Varricchio v. County of Nassau, 702 F.Supp.2d 40 (E.D.N.Y. 2010). A detainee brought a § 1983 action against a county and officials, alleging civil rights violations. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the detainee adequately alleged that he was denied his right to a speedy trial and that he was presumptively prejudiced by the delay, as required to state a § 1983 claim for a Sixth Amendment violation. The detainee alleged he was held for two years in prison prior to

receiving trial for the charge of violating a protective order, and that he was subsequently found not guilty. The court held that the detainee adequately alleged that his conditions of confinement constituted cruel and unusual punishment, as required to state an Eighth Amendment claim. The detainee alleged that he received tainted food that contained bodily waste, soap, metal pins, and staples, and that, when he went on a hunger strike to protest his legal situation, deputy sheriffs were taking bets on when he would start eating again. (Nassau County Sheriff's Department, New York)

U.S. District Court
RELIGIOUS DIET

Ward v. Rabideau, 732 F.Supp.2d 162 (W.D.N.Y. 2010). Jewish prison inmates at a state correctional facility brought a § 1983 action against prison officials, alleging their First Amendment rights were violated by the defendants' failure to properly accommodate their religious needs. The defendants moved for summary judgment. The district court denied the motion. The court found that summary judgment was precluded by genuine issues of material fact as to whether "special circumstances" existed so as to excuse the two inmates' failure to exhaust administrative remedies, pursuant to the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action against prison officials. The court held that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer treated Jewish prison inmates differently on account of their religion. The court also found a genuine issue of material fact as to whether cold alternative meals available in a state correctional institution violated the Jewish inmates' constitutional right to a kosher diet, pursuant to the inmates' rights to religious liberty under First Amendment. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether prison officials prevented Jewish inmates from having materials necessary to their worship, on the inmates' claim that the officials failed to make reasonable accommodation to their religious beliefs in violation of the First Amendment, by not providing a rabbi or religious materials in the correctional facility. (Groveland Correctional Facility, New York)

U.S. District Court
RELIGIOUS DIET

Willis v. Commissioner, Indiana Dept. of Correction, 753 F.Supp.2d 768 (S.D.Ind. 2010). A Jewish inmate brought a class action against a Department of Corrections (DOC), alleging denial of kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and his First Amendment free exercise of religion rights. Cross motions for summary judgment were filed. The motions were granted in part and denied in part. The district court held that: (1) the denial of a kosher diet substantially burdened the inmate's religious exercise; (2) the increased costs of providing kosher meals to inmates was not a compelling interest; (3) the DOC did not establish that providing vegan meals to Jewish inmates was the least restrictive means of furthering a compelling government interest; (4) enforcement of a prison policy violated the First Amendment as applied to the Jewish inmate; and (5) the chaplain knowingly applied the policy in violation of the Jewish inmate's First Amendment rights. According to the court, requiring inmates with religious diet cards to eat 75% of their meals using the card or have the card suspended violated the First Amendment as applied to the Jewish inmate who could only eat kosher meals pursuant to his beliefs. The court noted that the inmate used his card for all available meals, which was only two-thirds of mealtimes as the prison did not provide kosher breakfasts, and the inmate had no alternative to the kosher diet once the prison suspended his card. (New Castle Corr'l Facility, Indiana)

2011

U.S. District Court
RELIGIOUS DIET

Barnes v. Fedele, 760 F.Supp.2d 296 (W.D.N.Y. 2011). A state prisoner brought a § 1983 action against officials or employees of New York's Department of Correctional Services (DOCS), alleging that the defendants violated his constitutional rights while he was incarcerated. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the state prisoner failed to allege that he was treated differently on account of his religion, as would support his equal protection claim, where nothing in the prisoner's complaint suggested that any similarly situated inmates of a different faith were treated more favorably than him, or that he was singled out for discriminatory treatment on account of his religion. The prisoner had alleged that Rastafarian, but not Jewish, inmates were permitted to wear crowns. The court also found that the prisoner failed to assert any factual allegations to support his claim under § 1983 that a prison employee denied him a Kosher diet. According to the court, a prison rabbi did not violate the prisoner's constitutional rights, and thus was not liable under § 1983, by allegedly failing to respond to one of the prisoner's letters, and by responding to the prisoner's complaints regarding religion rules in a way in which the prisoner was unhappy. (Southport Correctional Facility, New York)

U.S. District Court
RELIGIOUS DIET

Roberts v. Klein, 770 F.Supp.2d 1102 (D.Nev. 2011). A Black state prisoner filed a civil rights action against prison administrators and employees alleging violation of his First Amendment right to free exercise of religion, his statutory rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Equal Protection Clause. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner stated a claim that prison officials and employees violated his religious rights under the First Amendment, RLUIPA, and the Equal Protection Clause on allegations that they implemented and enforced a policy that denied him kosher meals because his Jewish faith had not been verified by an outside entity, and the prison did not show that there was valid rational connection between the prison regulation and a legitimate government interest. (Southern Desert Correctional Center, Nevada)

U.S. Appeals Court
RELIGIOUS DIET

Vinning-El v. Evans, 657 F.3d 591 (7th Cir. 2011). A state inmate brought an action against correctional facility officials, alleging violations of § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on their denial of his request for a vegan diet, which he claimed was required by his religious practices. The district court entered an order granting in part and denying in part the officials' motion for summary judgment, and they appealed. The appeals court held that the inmate could not recover monetary damages against officials under RLUIPA. According to the court, the inmate's action against the officials was treated as an action against the state, and monetary damages were not available against a state under RLUIPA. (Pinckneyville Correctional Center, Illinois)

U.S. District Court
SPECIAL DIET

Bektic-Marrero v. Goldberg, 850 F.Supp.2d 418 (S.D.N.Y. 2012). The wife of an inmate who died of cancer-related causes while in the custody of a county department of correction (DOC) brought an action against the county, DOC officials, and entities that contracted with the county to provide medical care and treatment to DOC inmates and employees of those entities. The wife alleged under § 1983 that the inmate received inadequate medical care, and asserted related state-law claims for wrongful death and medical malpractice. The defendants moved to dismiss for failure to state a claim and/or for summary judgment. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the physicians who were under contract with the county to provide medical services to inmates at the county jail on a part-time basis acted under the color of state law, within the meaning of § 1983, when they treated the inmate, and thus the physicians were subject to liability under § 1983. The court held that the allegations that the health care coordinator for the DOC denied or delayed responding to the wife's request for the inmate's medical records, which she hoped to use to have the inmate's parole restored and to seek a second medical opinion, and that the coordinator expressly denied the wife's request to provide the inmate with a liquid dietary supplement which wife would supply at her own cost, sufficiently pled the coordinator's personal involvement in the alleged deprivation of necessary medical care to the inmate, so as to subject the coordinator to liability under § 1983. (Westchester County Department of Correction, New York)

U.S. District Court
RELIGIOUS DIET

Colvin v. Caruso, 852 F.Supp.2d 862 (W.D.Mich. 2012). A state prisoner filed a § 1983 action against prison officials, asserting that the prison's 16-day denial of kosher meals, mistakes in administering the kosher-meal program, and lack of Jewish services and literature at the prison violated his constitutional rights and Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials, and denied prisoner's motion to amend and second motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand, the district court held that the prison's "zero tolerance" policy for possession of even one non-kosher food item violated the Free Exercise Clause and RLUIPA. But the court determined that the officials were entitled to qualified immunity where there had not been any determination that the regulation was in any way deficient at the time of the officials' actions. The court held that the prison's use of questionnaire about the inmate's knowledge of his designated religion was proper. According to the court, the officials' failure to reinstate the inmate to his kosher diet regimen violated the inmate's rights but punitive damages were not warranted. The court awarded \$1 in nominal damages where the inmate did not look like he missed many meals as a result of the officials' actions, and there was no evidence of physical injury. The court noted that even though the prison had economic interest in restricting kosher diet to prisoners who had a sincere belief that the diet was necessary to practice their religion, where the inmate had no other means of eating, there was no evidence that providing a modicum of flexibility would have a ripple effect on prison staff or inmates or would escalate the cost of providing kosher meals. (Michigan Department of Corrections, Alger Correctional Facility)

U.S. District Court
HEALTH STANDARDS
SEGREGATION

Henderson v. Thomas, 913 F.Supp.2d 1267 (M.D.Ala. 2012). Seven HIV-positive inmates brought an action on behalf of themselves and class of all current and future HIV-positive inmates incarcerated in Alabama Department of Corrections (ADOC) facilities, alleging that ADOC's HIV segregation policy discriminated against them on the basis of their disability, in violation of the Americans with Disabilities Act (ADA) and Rehabilitation Act. After a non-jury trial, the district court held that: (1) the class representatives had standing to sue; (2) the claims were not moot even though one inmate had been transferred, where it was reasonable to believe that the challenged practices would continue; (3) inmates housed in a special housing unit were "otherwise qualified," or reasonable accommodation would render them "otherwise qualified;" (4) the blanket policy of categorically segregating all HIV-positive inmates in a special housing unit violated ADA and the Rehabilitation Act; (5) housing HIV-positive inmates at other facilities would not impose an undue burden on the state; and (6) food-service policies that excluded HIV-positive inmates from kitchen jobs within prisons and prohibited HIV-positive inmates from holding food-service jobs in the work-release program irrationally excluded HIV-positive inmates from programs for which they were unquestionably qualified and therefore violated ADA and the Rehabilitation Act. (Alabama Department of Corrections)

U.S. District Court
RELIGIOUS DIET

Jones v. Hobbs, 864 F.Supp.2d 808 (E.D.Ark. 2012). A prisoner brought an action against various state department of correction (DOC) officials, alleging violations of the First and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether officials impeded the prisoner's efforts to secure a diet which comported with the dictates of his religion; (2) whether fiscal and security concerns were rationally connected to the denial of a religious diet; (3) whether the prisoner had a sufficient alternative means to practice his religion; (4) whether there was an alternative way to accommodate the prisoner's request for a vegan meal at de minimis cost to valid penological interests; and (5) whether the prisoner's right to a diet suiting his religious beliefs was clearly established. (Arkansas Department of Correction)

U.S. Appeals Court
RELIGIOUS DIET
EQUAL PROTECTION

Moussazadeh v. Texas Dept. of Criminal Justice, 703 F.3d 781 (5th Cir. 2012). A Jewish state prisoner brought an action against the Texas Department of Criminal Justice, alleging that the defendant denied his grievances and requests for kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Texas Religious Freedom Restoration Act. The district court entered summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded. The court held that the state Jewish prisoner exhausted his administrative remedies with respect to his claim that a prison's failure to provide him with kosher meals violated RLUIPA, where the prisoner went through the state's entire grievance process

before filing suit. The court found that sufficient evidence established that the prisoner's religious beliefs were sincere, as required to support a claim against state's department of criminal justice for violation of RLUIPA, where the prisoner stated that he was born and raised Jewish and had always kept a kosher household, the prisoner offered evidence that he requested kosher meals from the chaplain, kitchen staff, and the department, and while at another prison, he ate kosher meals provided to him from the dining hall. The court noted that the prisoner was harassed for his adherence to his religious beliefs and for his demands for kosher food, and that the department transferred the prisoner for a time so he could receive kosher food. The court held that the prisoner was denied a generally available benefit because of his religious beliefs, and thus, the state's department of criminal justice imposed a substantial burden on the prisoner's religious exercise under RLUIPA, where every prisoner in the department's custody received a nutritionally sufficient diet, every observant Jewish prisoner at the designated prison received a kosher diet free of charge, and the Jewish prisoner at issue was forced to pay for his kosher meals. The court found that there was no evidence of a compelling government interest in forcing the Jewish prisoner to pay for all of his kosher meals. The court also found that summary judgment was precluded by a general dispute of material fact as to whether the state's department of criminal justice employed the least restrictive means of minimizing costs and maintaining security by forcing the Jewish prisoner to pay for all of his kosher meals. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
DISCIPLINE
NUTRITION
SPECIAL DIET

Prude v. Clarke, 675 F.3d 732 (7th Cir. 2012). An inmate brought a § 1983 action against a sheriff and jail personnel, alleging that he was subjected to cruel and unusual punishment in violation of the Eighth Amendment as a result of his exclusive diet of nutritoaf, a bad-tasting food given to prisoners as a form of punishment. The parties moved for summary judgment. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were aware that the inmate was being sickened by his exclusive diet of nutritoaf, yet did nothing about it. According to the court, deliberate withholding of nutritious food from a prison inmate, or substitution of a tainted or otherwise sickening food, with the effect of causing substantial weight loss, vomiting, stomach pains, and maybe an anal fissure, or other severe hardship, violates the Eighth Amendment prohibition against cruel and unusual punishment. (Milwaukee County Jail, Wisconsin)

U.S. District Court
MEDICAL DIET

Schwartz v. Lassen County ex rel. Lassen County Jail (Detention Facility), 838 F.Supp.2d 1045 (E.D.Cal. 2012). The mother of a deceased pretrial detainee brought a § 1983 action on behalf of herself and as successor in interest against a county, sheriff, city, police department, and several officers, alleging violations of the Fourteenth Amendment. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that: (1) the undersheriff knew the pretrial detainee from various encounters with the county, including his diverticulitis and congenital heart condition that required a restricted diet; (2) the undersheriff gave testimony to set bail for the detainee at \$150,000 on a misdemeanor offense; (3) the detainee's doctor sent a letter explaining the detainee should be put on house arrest as opposed to detention because of his medical condition; (4) the detainee had to be admitted to a hospital for emergency surgery during a previous confinement; (5) the detainee's mother requested he be released for medical attention; (6) the detainee lost over 40 pounds during two weeks of detention; (7) the detainee requested to see a doctor but was told to "quit complaining;" and (8) the undersheriff personally knew the detainee was critically ill, were sufficient to plead that the undersheriff knew of and failed to respond to the detainee's serious medical condition, as would be deliberate indifference required to state a § 1983 claim alleging violations of Fourteenth Amendment due process after the detainee died. The court found that allegations that the undersheriff owed the pretrial detainee an affirmative duty to keep the jail and prisoners in it, and that he was answerable for their safekeeping, were sufficient to plead a duty, as required to state a claim of negligent infliction of emotional distress (NIED) under California law against the undersheriff after the detainee died. (Lassen County Adult Detention Facility, California)

U.S. Appeals Court
RELIGIOUS DIET

Sisney v. Reisch, 674 F.3d 839 (8th Cir. 2012). A state prisoner brought a civil rights action against prison officials, alleging that the officials violated his First Amendment free exercise rights when they denied his requests to erect, and eat his meals in, a temporary structure during a Jewish festival. The district court entered judgment in favor of the officials, and the inmate appealed. The appeals court affirmed. The appeals court held that prison officials did not violate the prisoner's clearly established First Amendment free exercise rights when they denied his requests to erect and eat his meals in a temporary structure or "succah" during a Jewish festival, entitling them to qualified immunity. According to the court, it was not apparent that the contours of a prisoner's right to reasonable dietary and meal accommodations extended to the use of a succah. (South Dakota State Penitentiary)

U.S. District Court
SPECIAL DIET

Starr v. Moore, 849 F.Supp.2d 205 (D.N.H. 2012). A state prisoner brought an action against a prison employee and others, alleging First Amendment retaliation and violation of his Eighth Amendment rights, in connection with employee's alleged conduct of telling other inmates that they were no longer receiving special meals on holidays as a result of a prior lawsuit filed by prisoner. The prisoner moved to exclude evidence of his prior lawsuits and grievances. The district court held that evidence of the prisoner's subsequent grievances and lawsuits against prison employees was relevant and that alleged prior statements by the employee, blaming the prisoner for a prison policy of no longer providing special meals to prisoners on holidays, were admissible as prior bad acts. (Northern New Hampshire Correctional Facility)

U.S. Appeals Court
DENIAL OF FOOD

Taylor v. Dormire, 690 F.3d 898 (8th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that the officials refused to feed the prisoner for several days while he was restrained in connection with his removal from his cell, based on his declaration of his cellmate as an enemy. The district court entered judgment on the jury's verdict for the officials. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the district court's error was not harmless as to its failure to give the prisoner's

requested instruction on nominal damages. The court noted that the jury had been instructed that damages constituted a required element of a verdict in favor of the prisoner and that if any element was not proven then the verdict had to be in favor of prison officials. According to the court, the jury must have considered the damages issue, since it wrote a symbol for “zero” in the space on the verdict form for damages. (Jefferson City Correctional Center, Missouri)

2013

U.S. District Court
COMMISSARY
RELIGIOUS DIET

Borkholder v. Lemmon, 983 F.Supp.2d 1013 (N.D.Ind. 2013). A prisoner brought an action against state prison officials seeking declaratory and injunctive relief to challenge the officials' decision to revoke his vegan diet. Both parties moved for summary judgment. The district court denied the officials' motion, granted the prisoner's motion, and entered an injunction. The court held that the fact that the prisoner's vegan diet had been restored did not render moot his declaratory judgment action against state prison officials, in which he alleged that they violated his religious rights by revoking his vegan diet for purchasing chicken-flavored ramen noodles, because no vegetarian noodles were available to him, and his vegan diet was subject to revocation anytime he ordered ramen noodles, regardless of whether he consumed the seasoning packet containing chicken. The court found that the prisoner demonstrated a substantial burden to his religious practice, satisfying his initial burden under The Religious Land Use and Institutionalized Persons Act (RLUIPA), where the prisoner held a religious belief that required him to adhere to a vegan diet, he purchased chicken-flavored ramen noodles from the state prison commissary, the commissary did not carry a vegetarian noodle option, the prisoner did not eat the meat flavoring packet but instead discarded it, and the prisoner's vegan diet was revoked solely due to his noodle purchase. According to the court, prison officials' revocation of the prisoner's vegan diet was not the least restrictive means to further a compelling governmental interest, and thus the officials did not meet their burden under RLUIPA to justify such action. The court noted that although the state prison policy dictated that personal preference diet cards could be confiscated if a prisoner abused or misused the privilege by voluntarily consuming self-prohibited foods, and such policy was legitimately geared toward weeding out insincere requests, the prisoner's purchase of noodles with a meat seasoning packet did not mean that his beliefs were insincere. The district court decision opened by stating: “It is not every day that someone makes a federal case out of ramen noodles. But unfortunately that's what Joshus Borkholder had to do.” (Miami Correctional Facility, Indiana)

U.S. District Court
NUTRITION
RELIGIOUS DIET

Conway v. Purves, 963 F.Supp.2d 708 (E.D.Mich. 2013). State prisoners brought an action against a state department of corrections (DOC) and its officials challenging the nutritional adequacy of the meals provided to the prisoners during the Islamic month of Ramadan, and asserting claims for violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and constitutional violations. The plaintiffs moved for a preliminary injunction or a temporary restraining order (TRO) to require the department of corrections and its officials to provide nutritionally balanced meals containing between 2600 and 2900 calories on any given day during Ramadan. The district court denied the motion, finding that the prisoners failed to show certain and immediate irreparable harm, as required for a preliminary injunction. The court noted that Ramadan had recently concluded, that any harm that the prisoners could suffer approximately one year in the future was speculative, and the action would likely be resolved prior to the next Ramadan observance. (Michigan Department of Corrections)

U.S. District Court
FOOD
SANITATION

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials “triple-celled” inmates, allegedly leading to unsanitary conditions, amounted to a “custom” for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity.

The court held that the food service provider's serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not “punishment,” as would support the inmate's § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee's diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate's meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate's due process rights. (Atlantic County Justice Facility, New Jersey)

U.S. Appeals Court
SEGREGATION
UTENSILS

Earl v. Racine County Jail, 718 F.3d 689 (7th Cir. 2013). An inmate brought a § 1983 action against a county jail and various jail officers, asserting claims for denial of due process and deliberate indifference to his serious medical condition. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's five days on suicide watch were neither long enough nor harsh enough to deprive him of a due-process-protected liberty interest, where: (1) the only changes to the inmate's meals were that trays upon which food was served were disposable foam rather than plastic; (2) eating utensils were quickly removed after each meal; (3) the inmate was not denied bedding but was given a mattress and a blanket; (4) the inmate was denied writing materials for only the first 48 hours; and (5) rather than being prohibited human contact, deputies were assigned to closely and personally monitor the inmate to ensure his safety. The court found that jail officers were not deliberately indifferent to the inmate's allergic reaction to suicide garments in violation of the Eighth Amendment. The court noted that after the inmate told an officer about his allergic reaction to a suicide gown, the officer called a nurse who immediately examined the inmate and gave him cream and medication, and the officers appropriately deferred to the nurse's medical decision that the inmate did not need different garments because there was no sign of rash or bumps on the inmate. (Racine County Jail, Wisconsin)

U.S. Appeals Court
RELIGIOUS DIET
EQUAL PROTECTION

Furnace v. Sullivan, 705 F.3d 1021 (9th Cir. 2013). A state prison inmate brought a § 1983 action against correctional officers, alleging they used excessive force in violation of the Eighth Amendment by spraying him with an excessive quantity of pepper spray, and that they violated his rights to equal protection under the Fourteenth Amendment rights when they denied him a vegetarian breakfast as required by his religion. The officers moved for summary judgment. The district court granted the motions, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate posed a threat to correctional officers, and as to whether the officers' discharge of pepper spray on the inmate was required to gain his compliance. The court found that correctional officers who refused to provide the inmate with a vegetarian meal required by his religion did not treat the inmate any differently than others who were similarly situated, and thus the officers did not violate the inmate's Fourteenth Amendment right to equal protection. The court noted that although other prisoners were provided with vegetarian meals for religious reasons, they were not similarly situated to the inmate because the officers did not know the inmate had also been approved for a vegetarian meal. (Salinas Valley State Prison, California)

U.S. District Court
NUTRITION
RELIGIOUS DIET
FOOD QUALITY

Garnica v. Washington Dept. of Corrections, 965 F.Supp.2d 1250 (W.D. Wash. 2013). A state prisoner brought an action in state court against the Washington Department of Corrections (DOC) and DOC personnel, alleging violations of First, Eighth, and Fourteenth Amendments, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The action was removed to federal court, and the defendants moved for summary judgment. The district court granted the motion. The court held that even if the ailments that the Muslim prisoner experienced during a Ramadan fast were related to meals provided to him by prison personnel during the fast, those ailments were not sufficiently serious to constitute a serious medical need, as required to establish prison personnel's deliberate indifference to a serious medical need, in violation of the Eighth Amendment. The court found that prison personnel did not act with deliberate indifference to the Muslim prisoner's health and safety with respect to the meals provided to the prisoner during his Ramadan fast, and thus, there was no violation of the prisoner's Eighth Amendment rights. The court noted that prison personnel acted with the intent to provide the prisoner and other Ramadan participants with proper nutrition and calories during Ramadan, and when they learned the caloric value of the prison's Ramadan meals had been miscalculated, they corrected the caloric values and added supplements to the meals to ensure that the goal of 2700 average calories was met. When the prisoner complained of diarrhea, constipation, and headaches during Ramadan, he was seen by a DOC medical professional and was treated for his complaints.

The court held that the prisoner's right to practice his Muslim religion was not substantially burdened, within the meaning of RLUIPA, by the nature or quantity of food provided to him by prison personnel during the Ramadan fast. According to the court, although the prisoner was not satisfied with the quality or quantity of the food provided, he and other Ramadan participants were given a daily meal and supplements. The court found that meals contained an average of 2700 calories and he and other vegetarian participants received additional snacks to compensate for meat items they could not consume. The court noted that even though one meal that was provided contained only approximately 1900 calories due to a mistake in packaging the Ramadan meals, the mistake was corrected the next day and thereafter the prisoner was given calorically and nutritionally adequate meals throughout the Ramadan fast. (Clallam Bay Corrections Center, Washington Department of Corrections)

U.S. District Court
MEDICAL DIET

Hahn v. Walsh, 915 F.Supp.2d 925 (C.D.Ill. 2013). The estate of a diabetic pretrial detainee brought an action against a city, police officers, a county, the county sheriff, and a jail medical provider, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's serious medical needs. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that a city police officer at the scene of the arrest who had no involvement with the diabetic detainee could not be held liable under § 1983 for being deliberately indifferent to the serious medical needs of detainee, who died from diabetic ketoacidosis after she was taken to a county jail. The court also found that city police officers who transported the detainee to the county jail, rather than a hospital, were not deliberately indifferent to the serious medical needs of the detainee, where the officers were entitled to defer to the judgment of the paramedics on the scene. According to the court, there was no evidence that the county sheriff knew of a serious risk to the health of the diabetic pretrial detainee and consciously disregarded that risk, that any prior deaths at the jail involved medical care provided to an inmate, much less that medical care involved an inmate with diabetes, or that the sheriff's decisions about certification of the jail's medical contractor had any adverse effect on the detainee, as would subject the sheriff to liability under § 1983, in his individual capacity, for his alleged deliberate indifference to the detainee's serious medical needs. The court found that the county's actions in shutting off

water to the mentally ill, diabetic pretrial detainee's cell when the inmate was stuffing clothing into the cell's toilet did not violate the detainee's Fourteenth Amendment rights.

According to the court, the estate's claim against the county that the detainee, who died of diabetic ketoacidosis after allegedly refusing diabetic treatment and food while incarcerated, was not properly treated for her mental illness and diabetes was not actionable under the Americans with Disabilities Act (ADA) or the Rehabilitation Act. (Champaign County Jail, Illinois)

U.S. District Court
COMMISSARY
DENIAL OF FOOD
RELIGIOUS DIET

Johns v. Lemmon, 980 F.Supp.2d 1055 (N.D.Ind. 2013). An inmate, who was an Observant Jew, brought an action against a prison superintendent and a commissioner of the department of corrections (DOC), alleging that denial of food on Friday to consume on the Sabbath violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The parties cross-moved for summary judgment. The district court granted the plaintiff's motion and denied the defendants' motion. The court held that the prison's failure to provide food on Friday to the inmate was a substantial burden on his religious exercise, and that the practice did not serve a compelling governmental interest of food safety. The inmate sought to have food provided on Friday to consume on the Sabbath, and the prison's refusal required him to buy his Sabbath food from the commissary. The court noted that the inmate's preferred practice was permitted for a period of about five months and during that time the inmate stored meals in a cooler for a day, which other prisoners were permitted to do. (Miami Correctional Facility, Indiana Department of Corrections)

U.S. District Court
RELIGIOUS DIET

Lewis v. Zon, 920 F.Supp.2d 379 (W.D.N.Y. 2013). A Jewish inmate brought an action against a state's department of corrections and approximately 50 of its officials and employees pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of religious accommodations in violation of the First Amendment and RLUIPA. The inmate moved for summary judgment and the defendants cross moved to dismiss and/or for summary judgment. The district court denied the plaintiff's motion, and granted in part and denied in part the defendant's motion. The court held that: (1) there was no evidence that the prison's practice of inspecting the inmate's meals substantially burdened the prisoner's free exercise of his faith; (2) the prison's policy of inspecting the prisoners' meals for dangerous items was objectively reasonable; (3) the prison's offering of religious meal plans to inmates who demonstrated entitlement thereto preserved the inmates' free exercise freedoms; (4) the prison's failure to provide the inmate with food during Jewish holy day fast days was not cruel and unusual punishment; (5) there was no evidence that the defendants were deliberately indifferent to the inmate's medical needs during his hunger strike; (6) a material fact dispute regarding whether the inmate was denied medical treatment when he began experiencing pain after the culmination of his hunger strike precluded summary judgment on the claim for deliberate indifference to a serious medical need; and (7) the inmate's having to forego fresh bedding for a few hours after soiling his bedding was not a serious medical situation requiring treatment. (New York State Department of Correctional Services, Upstate Correctional Facility, Downstate Correctional Facility, Wende Correctional Facility, and Auburn Correctional Facility)

U.S. Appeals Court
NUTRITION
RELIGIOUS DIET

Mays v. Springborn, 719 F.3d 631 (7th Cir. 2013). A former state prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleging retaliation for his complaints about the searches, denial of his request for a dietary supplements which he considered to be religious necessities, inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated the judgment with respect to the strip searches, and remanded. On remand, the district court entered judgment, upon a jury verdict, in favor of the officials as to the strip search claims, and the prisoner again appealed. The appeals court reversed and remanded. The appeals court held that: (1) even if there was a valid penological reason for the strip searches conducted on a prisoner, the manner in which the searches were conducted was itself required to pass constitutional muster, and (2) a jury instruction requiring the prisoner to negate the possibility that strip searches would have occurred even if there had been no retaliatory motive was plain error. (Stateville Correctional Center, Illinois)

U.S. District Court
NUTRITION
RELIGIOUS DIET

Munson v. Gaetz, 957 F.Supp.2d 951 (S.D.Ill. 2013). A Buddhist inmate brought a § 1983 action against prison officials, alleging failure to provide him with an adequate diet, deliberate indifference to his serious medical needs, and violations of his right to free exercise of religion. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the officials were not aware that feeding the inmate a soy-rich diet posed a substantial risk of serious harm to the inmate, and therefore, the officials were entitled to qualified immunity from the inmate's § 1983 claim alleging violations of the Eighth Amendment. The court found that there was no evidence that a vegetarian diet containing soy was nutritionally inadequate, as required for the Buddhist inmate's § 1983 claim alleging violations of his First Amendment free exercise rights. The court held that the Buddhist inmate had administratively exhausted his claims that a high-soy diet fed to him violated the Eighth Amendment and his First Amendment free exercise rights, where he had submitted grievances about the diet to the grievance office, he wrote to a warden and an assistant warden regarding his grievances, and the prison officials did not respond to the grievances. (Menard Correctional Center, Illinois)

U.S. District Court
RELIGIOUS DIET

Parkell v. Morgan, 917 F.Supp.2d 328 (D.Del. 2013). A pretrial detainee, proceeding pro se and in forma pauperis, brought a § 1983 action against a medical provider and various officials, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court found that the detainee's allegations that he did not have adequate law library access were insufficient to state a § 1983 claim for violation of the First Amendment right of access to the courts, where the detainee alleged he was provided access to a law library, just not type he desired. The court held that the detainee's allegations that he adhered to a mystic branch

of Wicca and that the prison offered limited selection of diets to satisfy his religious needs were sufficient to state a § 1983 claim for violation of his First Amendment religious rights. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
RELIGIOUS DIET

Rich v. Secretary, Florida Dept. of Corrections, 716 F.3d 525 (11th Cir. 2013). A prisoner brought an action against the Florida Department of Corrections and corrections officials for money damages and injunctive relief, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), based on their failure to provide him with a strictly kosher diet. The district court entered summary judgment for the Department and the officials. The prisoner appealed. The appeals court reversed and remanded. The court held that Florida's plan to provide kosher meals to prisoners did not render the prisoner's claim moot because the new plan was not an unambiguous termination of its policy which had deprived the prisoner of kosher meals. The court found that summary judgment was precluded by fact issues as to whether denial of kosher meals was in furtherance of a compelling government interest, and as to whether denial of kosher meals was the least restrictive means to further the cost and security interests that were asserted. (Union Correctional Institution, Florida)

U.S. District Court
DENIAL OF FOOD
RELIGIOUS DIET

Washington v. Afffy, 968 F.Supp.2d 532 (W.D.N.Y. 2013). A Muslim inmate, proceeding pro se, brought an action against the department of correctional services (DOCS) employees, alleging violations of the First, Eighth, and Fourteenth Amendments. The employees moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) ordering the inmate to clean up human waste did not violate the Eighth Amendment; (2) housing the inmate with a cellmate who allegedly exposed the inmate to pornographic images and prevented him from reciting his daily prayers with necessary humility and tranquility did not violate the inmate's First Amendment free exercise right; (3) the inmate's allegations that he was denied two religious breakfast meals and one evening meal during a Muslim holy month unless he signed up to work in the mess hall were insufficient to state a claim; (4) the Muslim inmate's allegations that he was singled out in being ordered to clean up feces, being transferred to a different cell, and transferred to new prison job were insufficient to state a claim for violations of Fourteenth Amendment equal protection. (Southport Correctional Facility, New York)

2014

U.S. District Court
RELIGIOUS DIET
FREE EXERCISE

Banks v. Annucci, 48 F.Supp.3d 394 (N.D.N.Y. 2014). A state inmate filed a § 1983 action alleging that correctional officers harassed him, tampered with his food and contaminated his Kosher meals, interfered with his mail, mishandled his grievances, and interfered with his access to courts, and that prison medical employees were deliberately indifferent to his serious medical needs and involuntarily administered psychotropic drugs to him. The district court held that the inmate's allegation that correctional officers tampered with or contaminated his meals was sufficient to state a claim for violation of his Eighth Amendment right to nutritionally adequate food prepared and served under conditions that did not present an immediate danger to his health and well-being. The court found that the Jewish inmate's allegation that prison employees tampered with his sealed Kosher meals on several occasions by unsealing items and/or contaminating them was sufficient to state a claim against an employee for violation of his rights under the Free Exercise Clause. (Upstate Correctional Facility, New York)

U.S. District Court
RELIGIOUS DIET

Dean v. Corrections Corporation of America, 108 F.Supp.3d 702 (D. Ariz. 2014). A state prisoner, who was an adherent of the Essene faith, brought a § 1983 action against a private prison management company, warden, and the State of Hawai'i Department of Public Safety, alleging that, following his assignment to a prison in Arizona, he was denied a raw-food, vegetarian diet that had been requested, consistent with his religious beliefs, in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants' motion for a change of venue to the District of Arizona. The defendants moved for summary judgment. The district court granted the motion, finding that: (1) material fact issues existed as to the sincerity of the prisoner's beliefs and whether those beliefs were substantially burdened; (2) the potential perception of preferential treatment was not a compelling interest to justify a burden on the prisoner's religious practice under RLUIPA; (3) an inconsistency with simplified food service and additional costs presented a compelling interest to justify the burden on the prisoner's religious practice under RLUIPA; (4) rejecting the prisoner's requested diet was the least restrictive means to further a compelling government interest; and (5) refusing the prisoner's requested diet did not violate his First Amendment rights. (Saguaro Correctional Center, operated by Corrections Corporation of America, Arizona)

U.S. District Court
SEGREGATION

Houston v. Cotter, 7 F.Supp.3d 283 (E.D.N.Y. 2014). An inmate brought a § 1983 action against corrections officers and a county, alleging a due process violation in connection with his placement on a suicide watch while incarcerated at a county correctional facility. The parties filed cross-motions for summary judgment. The district court denied the motions, finding that summary judgment was precluded by fact issues as to whether a protected liberty interest was implicated. The inmate alleged that the county had a policy or custom permitting classification officers to keep an inmate on suicide watch as a form of punishment, after mental health personnel had deemed a continued suicide watch unnecessary. The inmate remained on suicide watch for eight days after a psychiatrist and a social worker recommended his removal from the suicide watch. The court also found a genuine dispute of material fact as to whether the inmate's conditions of confinement while he was placed on suicide watch imposed an atypical and significant hardship on him in relation to the ordinary incidents of prison life, such that it implicated a protected liberty interest. While on suicide watch, officials took away the inmate's clothing and required him to wear a suicide-safe garment-- a sleeveless smock made of a coarse, tear-resistant material and Velcro. He was not allowed to wear underwear, socks, or any other undergarment with the smock. He was housed in a stripped cell in the Behavioral Modification Housing Unit. The cell contained a bare mattress and a blanket made out of the same coarse material as the smock. Corrections officers situated immediately in front of the Plexiglass cell window constantly supervised the inmate. According to the county,

suicide watch inmates have access to the yard, a plastic spoon, a rubberized pen, the law library, showers, razors, and medical and mental health services, but the inmate claimed that he had no showers, telephone calls, prescription medications, food, or access to the law library while in the BMHU. (Suffolk County Correctional Facility, New York)

U.S. District Court
DENIAL OF FOOD

Little v. Municipal Corp., 51 F.Supp3d 473 (S.D.N.Y. 2014). State inmates brought a § 1983 action against a city and city department of correction officials, alleging Eighth Amendment and due process violations related to conditions of their confinement and incidents that occurred while they were confined. The defendants moved to dismiss for failure to state a claim. The district court granted the motion, finding that: (1) the inmates failed to state a municipal liability claim; (2) locking the inmates in cells that were flooding with sewage was not a sufficiently serious deprivation so as to violate the Eighth Amendment; (3) the inmates failed to state an Eighth Amendment claim based on the deprivation of laundry services; (4) the inmates failed to state that officials were deliberately indifferent to their conditions of confinement; (5) the inmates' administrative classification did not implicate their liberty interests protected by due process; and (6) cell searches did not rise to the level of an Eighth Amendment violation. The court noted that the cells flooded with sewage for up to eight-and-a-half hours, during which they periodically lacked outdoor recreation and food, was undeniably unpleasant, but it was not a significantly serious deprivation so as to violate the inmates' Eighth Amendment rights. According to the court, there was no constitutional right to outdoor recreation, and the inmates were not denied food entirely, but rather, were not allowed to eat during periods of lock-down. (N.Y. City Department of Corrections)

U.S. District Court
MEDICAL DIET

Noble v. Three Forks Regional Jail Authority, 995 F.Supp.2d 736 (E.D.Ky. 2014). A diabetic former inmate brought an action against a regional county jail and a number of its employees, individually and in their official capacities, alleging both constitutional claims under § 1983 and state claims stemming from his incarceration. The defendants moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the county jail maintained an official policy or custom to deprive inmates of medical care to save money, thus precluding the former inmate's § 1983 Eighth Amendment deliberate indifference claim against jail arising from his alleged receipt of daily diabetes medication that was contrary to his doctor's advice, and food that exacerbated his diabetic condition. The court found that the diabetic inmate was not at an excessive risk of serious harm, nor did county jail employees fail to take adequate precautions to protect the inmate from harm, and thus the employees were not deliberately indifferent to the inmate's serious medical condition, in violation of Eighth Amendment. The court noted that the inmate received substantial medical attention while incarcerated, and he was allowed special accommodations based on his diabetic condition, including taking his medication and blood sugar test kit to his cell. He was granted a specialized menu from the cafeteria, and his daily medication administration schedule was modified after consultation with a physician. (Three Forks Regional Jail Authority, Kentucky)

U.S. District Court
FOOD HANDLERS
PORTION
SERVICE

Taylor v. Swift, 21 F.Supp.3d 237 (E.D.N.Y. 2014). A pro se prisoner brought a § 1983 action against city jail officials, alleging that officials failed to protect him from an assault from other inmates, and that officials used excessive force in uncuffing the prisoner after escorting him from showers to his cell. The officials moved to dismiss based on failure to exhaust administrative remedies, and the motion was converted to a motion for summary judgment. The district court denied the motion. The prisoner claimed indifferent supervision of jail officers, when members of the Crips gang served him and other non-gang members "tiny food portions." The prisoner complained to officials and this resulted in the Crips gang members being admonished and chided. The day after this chiding, the prisoner alleged that he and two other non-Crips-affiliated inmates "were victims of gang assault where [plaintiff] & [another inmate] got cut & stabbed." According to the inmate, while the attack was occurring, a corrections officer allowed the Crips to act with impunity and waited 20 to 30 minutes to press an alarm, and another officer failed to open a door that would lead the prisoner to safety, and failed to use mace to break up the alleged gang assault. (New York City Department of Correction, Riker's Island)

U.S. District Court
RELIGIOUS DIET

Thompson v. Smeal, 54 F.Supp.3d 339 (M.D.Pa. 2014). A state prisoner brought a case against prison officials, alleging that denial of his request that Christian inmates be granted communal feasts on Christmas and Easter violated his religious and equal protection rights, and violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment and the inmate appealed. The appeals court vacated and remanded. On remand, the officials again moved for summary judgment, and the inmate moved for partial summary judgment. The district court denied the motions. The court held that summary judgment on the prisoner's First Amendment claim was precluded by genuine issues of material fact as to: (1) whether the prison's policy of refusing to provide Christmas and Easter communal meals for Christians only, with a group prayer over the food, was legitimately and neutrally applied; (2) whether the prison's penological interests were served by allowing some religious meals and not others; and (3) whether there were alternative means of exercising the prisoner's right to free religious expression. According to the court, summary judgment on the RLUIPA claim was precluded by a genuine issue of material fact as to whether denying communal meals to Christian inmates at the state prison was the least restrictive means to achieve the prison's alleged compelling interests of security, space limitations, and food safety concerns. (State Correctional Institution in Camp Hill, Pennsylvania)

U.S. Appeals Court
RELIGIOUS DIET

Wall v. Wade, 741 F.3d 492 (4th Cir. 2014). A Muslim state inmate filed an action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983 alleging that prison officials interfered with his Ramadan observance. The district court entered summary judgment in favor of the officials, and the inmate appealed. The appeals court vacated and remanded. The appeals court held that state prison officials' decision to abandon the policy of requiring inmates to provide some physical indicia of the Islamic faith, such as a Quran, Kufi, prayer rug, or written religious material obtained from the prison Chaplain's office, in order to receive

accommodations for a Ramadan observance did not moot the inmate's challenge to the policy as violative of his rights under the Free Exercise Clause and RLUIPA, where the officials retained the authority and the capacity to reinstate the policy. The court found that the policy violated the inmate's rights under the Free Exercise Clause, where the inmate provided a reasonable explanation for the fact that he lacked physical manifestations of his faith, officials ignored numerous signs that he was a practicing Muslim, and there was no evidence that the requested accommodation would have been unduly burdensome. The inmate provided a state court judgment against the Commonwealth as proof that the VDOC had lost his possessions, and also produced documents showing that he was receiving common fare meals in accordance with his faith, and he informed officers that he had observed Ramadan in 2008 and 2009. Despite this, an official responded, "that don't mean anything." The court held that the officials were not entitled to qualified immunity from liability in the inmate's action under RLUIPA and § 1983. (Red Onion State Prison, Virginia)

U.S. District Court
COMMISSARY
EQUAL PROTECTION
RELIGIOUS DIET

Winder v. Maynard, 2 F.Supp.3d 709 (D.Md. 2014). An inmate, proceeding pro se, brought a § 1983 action against a prison official, asserting that the official hindered his religious practice. The official filed a motion to dismiss or, in the alternative, for summary judgment. The district court granted the motion. The district court held that denial of the inmate's request for pork products for a Wiccan ceremonial meal did not substantially impede the inmate's ability to practice his religious beliefs in violation of the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court noted that the inmate's request for a religious ceremonial meal had been approved and he was directed that while the requested pork products could not be provided through the dietary department or prepared in Department of Corrections (DOC) kitchen facilities, pork products could nevertheless be purchased through the commissary and consumed at the ceremonial meal. According to the court, the prison's accommodation of other religious prisoners through the adoption of a religious diet while allegedly refusing to provide pork products for Wiccan practitioners did not violate the equal protection rights of the inmate because: (1) the kosher Jewish diet demanded certain food preparation and food choices not required for Wiccan inmates; (2) neither Jewish nor Muslim inmates received ritually slaughtered meat; (3) no pork was prepared in Department of Corrections (DOC) kitchens in order to respect the religious dietary requirements of Jewish and Muslim inmates; (4) the prison was unable to provide pork through dietary services due to legitimate penological goals regarding budget and security; (5) the prisoner was free to purchase pork products through the commissary; and (6) prison meal plans were created in order to see that the needs of all religious groups are accommodated. (Jessup Correctional Institution, Maryland)

2015

U.S. District Court
NUTRITION

Brown v. Moore, 93 F.Supp.3d 1032 (W.D. Ark. 2015). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a sheriff and jail officials, alleging that his constitutional rights were violated. The defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by an issue of fact as to whether the inmate's being housed with a prisoner who had a staph infection constituted deliberate indifference. The court found that the inmate's assertion that his diet was not approved on a yearly basis by a dietician in compliance with Arkansas Jail Standards did not equate to a constitutional violation under the Eighth Amendment. (Boone County Detention Center, Arkansas)

U.S. District Court
MEDICAL DIET
FOOD QUALITY

Byrd v. Stirling, 144 F.Supp.3d 803 (D.S.C. 2015). A state inmate filed a civil action against prison officials, alleging that the prison served him meals incompatible with his diabetes and that much of the food was expired, rotten, or full of preservatives. The district court dismissed the action, finding that the inmate failed to exhaust his administrative remedies before bringing the civil action in district court, and thus dismissal was warranted under the Prison Litigation Reform Act (PLRA). According to the court, the inmate did not complete all three levels of internal review at the prison before he filed suit. (Manning Correctional Institution, South Carolina)

U.S. Appeals Court
FOOD HANDLERS
RELIGION

Jones v. Williams, 791 F.3d 1023 (9th Cir. 2015). A Muslim former inmate brought civil rights claims against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), seeking monetary and injunctive relief. The district court entered summary judgment in favor of the officials and the former inmate appealed. The appeals court affirmed in part, vacated, and remanded in part. The court held that the inmate's claims for injunctive relief, arising from an alleged requirement that he handle pork while working in a kitchen, were moot because he had been released from custody. The court found that unsworn statements of an inmate cook who told the Muslim inmate that the food service coordinator had directed the inmate cook to mix pork in with meat used in a tamale pie were hearsay, and thus could not properly be considered in opposition to the prison officials' motion for summary judgment as to the Muslim inmate's claim that his free exercise rights were violated when he was served and ate the pie without notice that it contained pork. But the court held that prison officials were not entitled to qualified immunity from the Muslim inmate's § 1983 claim that he was ordered in 2007 to cook pork loins as part of his job duties in a kitchen, in violation of his religious beliefs. The court noted that the penitentiary implemented a policy prior to the incident in question, providing that an inmate could opt out of handling pork on religious grounds, the inmate alleged that he told the officers in charge that he had the right to not handle pork, and the fact that some officers claimed they were not personally aware of the policy change was not sufficient to show that the inmate's right to avoid handling pork was not clearly established. (Oregon State Penitentiary)

U.S. District Court
MEDICAL DIET
COMMISSARY
NUTRITION

Montalvo v. Lamy, 139 F.Supp.3d 597 (W.D.N.Y. 2015). An inmate brought an action against a sheriff, prison officials and a commissary, alleging that he was a diabetic and that, while incarcerated, he was not provided with a medically appropriate diet, was not permitted to purchase food items from the prison commissary, and was the subject of false misbehavior reports when he complained about his dietary issues. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate failed to

allege that the prison commissary, operated by a private company, was acting under the color of state law, as required to state constitutional claims against the commissary. The court noted that the inmate did not allege that the commissary had a policy of denying commissary access to diabetic prisoners or had the authority to override the prison's policy with respect to inmates with dietary restrictions, and instead, alleged that the prison maintained a policy of limiting commissary access for prisoners with dietary restrictions. The court found that the inmate did not state a First Amendment retaliation claim against a sergeant who allegedly would not process the inmate's grievance related to his inability to purchase snacks from the prison commissary, where the sergeant was acting in compliance with a state regulation, which required him, as the Grievance Coordinator, to return grievances regarding issues outside the authority of the chief administrative officer to control, such as medical decisions made by health care professionals.

The court held that the inmate adequately alleged that the food provided to him by the prison was not nutritionally adequate with respect to his status as a diabetic and that the diet he was provided presented an immediate danger to his health and well-being, and thus, the inmate met the objective component of an Eighth Amendment claim for medical indifference. (Erie County Holding Center, New York)

U.S. Appeals Court
RELIGIOUS DIET

Schlemm v. Wall, 784 F.3d 362 (7th Cir. 2015). A prisoner, a Navajo Tribe member, brought an action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against the Wisconsin Department of Corrections, seeking an order requiring the state prison system to accommodate some of his religious practices. The district court granted the prison's summary judgment motion. The prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner's inability to eat game meat for a religious feast substantially burdened his religious exercise, and as to whether the prisoner's inability to wear a multicolored headband while praying in his cell and during group religious ceremonies substantially burdened his religious exercise, and whether prison had a compelling justification for prohibiting multicolored headbands. (Wisconsin Department of Corrections)

U.S. District Court
DENIAL OF FOOD

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
NUTRITION

Smith v. Dart, 803 F.3d 304 (7th Cir. 2015). A pretrial detainee brought action under § 1983 against a county alleging deliberate indifference to his health in violation of the right to the provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for his job in the jail's laundry room. The district court dismissed the case and the detainee appealed. The appeals court held that the detainee sufficiently alleged that the food he received was "well below nutritional value," as required to state a claim under § 1983 for deliberate indifference to his health in violation of the Due Process Clause of the Fourteenth Amendment. (Cook County Jail, Illinois)

U.S. District Court
DENIAL OF FOOD

Smith v. Eovaldi, 112 F.Supp.3d 779 (S.D. Ill. 2015). A state inmate, proceeding in forma pauperis, brought a § 1983 action against several prison officers, alleging use of excessive force and exposure to inhumane conditions in his cell. The prisoner alleged that after he had a "negative outburst" and was "maced" by a lieutenant and removed from his cell by a corrections officer, he was taken to an infirmary bullpen, where he was forced to lie on the floor. While he was on the floor, the prisoner alleged that officers kicked and punched him for ten minutes, causing him to defecate upon himself. He alleged that after the incident, he was stripped of his prison clothes and "inadequately seen" by "medical" personnel. At the screening stage of the case, the district court dismissed the complaint in part against some defendants, but declined to dismiss with regard to the others. The court held that the inmate sufficiently alleged § 1983 claims against several prison officers for use of excessive force by alleging that the officers engaged in prolonged attacks against him and that one officer subsequently attacked him again. (Menard Correctional Center, Illinois)

U.S. Appeals Court
DENIAL OF FOOD
FOOD QUALITY
NUTRITION

Willey v. Kirkpatrick, 801 F.3d 51 (2d Cir. 2015). A state prisoner brought an action under § 1983 against a prison superintendent, a corrections sergeant, and corrections officers, alleging unsanitary conditions, theft of legal documents, harassment, malicious prosecution, and false imprisonment. The district court granted summary judgment to the defendants. The prisoner appealed. The appeals court vacated the district court's decision and remanded the case for further proceedings. The court held that remand was required for the district court to address issue in first instance of whether the prisoner had a right under the First, Fifth, Eighth, or Fourteenth Amendments to refuse to provide false information to a corrections officer. The court held that the prisoner adequately pleaded an Eighth Amendment claim against prison officials by alleging that his restricted diet was unusually unhealthy, where his diet consisted of bread that was usually stale and cabbage that usually was rotten. (Wende Correctional Facility, New York)

2016

U.S. Appeals Court
RELIGIOUS DIET

Thompson v. Holm, 809 F.3d 376 (7th Cir. 2016). A Wisconsin state prisoner brought a § 1983 action against prison staff, alleging violations of his First Amendment right to exercise his religion freely, specifically by preventing him from fasting properly during a Muslim holy month. The district court granted the staff's motion for summary judgment. The prisoner appealed. The appeals court vacated and remanded. The appeals court held that: (1) denial of meal bags substantially burdened the prisoner's free exercise rights; (2) fact issues existed as to whether staff members were personally involved; (3) fact issues existed as to whether staff members acted intentionally; and (4) qualified immunity did not shield the staff members, where the prisoner had a clearly established right to a diet consistent with his religious beliefs. The court noted that the denial of meal bags to the Muslim prisoner substantially burdened his First Amendment rights to free exercise of religion, where, without meal bags, the prisoner was forced to choose between foregoing adequate nutrition or violating a central tenant of his religion, i.e., fasting properly during holy month. According to the court, the prisoner was thereby denied a proper meal for a 55-hour period, which left him weak and tired, unsure if he would ever be put back on the appropriate list to receive meal bags, and pressured to use the cafeteria during daylight hours, contrary to his religious beliefs. (Waupun Correctional Institution, Wisconsin)

SECTION 19: FREE SPEECH, EXPRESSION AND ASSOCIATION

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1968

U.S. Appeals Court
RELIGIOUS
LITERATURE

Long v. Parker, 390 F.2d 816 (3rd Cir. 1968). Muslim writings banned in the 1960's are now generally allowed. (United States Penitentiary, Lewisburg, Pennsylvania)

1969

U.S. Supreme Court
VOTING

McDonald v. Board of Election Commissioners, 394 U.S. 802 (1969). Pretrial detainees in the Cook County Jail alleged that Illinois absentee ballot provisions violate the Equal Protection Clause of the fourteenth amendment for two reasons. First, since the distinction between those medically incapacitated, and those "judicially incapacitated" bear no reasonable relationship to any legitimate state objective, the classifications are arbitrary. Secondly, since pretrial detainees imprisoned in other states, or in counties within the state other than those of their own residence can vote absentee as citizens absent for any reason, it is clearly arbitrary to deny absentee ballots to other unsentenced inmates because they happen to be incarcerated within their own resident counties. This action was instituted after the defendant Board of Election Commissioners rejected a timely application for absentee ballots by plaintiffs.

The U.S. District Court for Northern District of Illinois granted summary judgment for the defendants, holding that extending absentee ballots to those physically incapacitated for medical reasons constituted a proper and reasonable classification not violative of equal protection. Plaintiffs appealed directly to the U.S. Supreme Court. (Affirmed.)

HELD: Illinois' failure to provide absentee ballots for plaintiffs does not violate the Equal Protection Clause. 394 U.S. at 806.

REASONING: a) Distinctions made by the absentee voting provisions are not drawn on the basis of wealth or race, and while classifications which might invade or restrain voting rights must be closely scrutinized, a more exacting judicial scrutiny is not necessary here. b) State legislatures traditionally are allowed to take reform one step at a time, and need not run the risk of losing an entire remedial scheme because it failed to cover every potential group. c) It is reasonable for Illinois to treat differently the physically handicapped as there is nothing to indicate that the judicially handicapped plaintiffs are absolutely prohibited from voting. d) Constitutional safeguards are not offended by the different treatment accorded unsentenced inmates incarcerated within and those incarcerated out of their counties of residence.

(Cook County Jail, Illinois)

1970

U.S. District Court
PRISONER
PUBLICATIONS

Fortune Society v. McGinnis, 319 F.Supp. 901 (S.D. N.Y. 1970). Prohibition of a publication which contains distorted or untrue articles about prisons or which might embarrass institution officials is not justified. (New York Prison System)

U.S. District Court
CORRESPONDENCE

Palmigiano v. Travisono, 317 F.Supp. 776 (D. R.I. 1970). The right to correspond is protected under the free speech clause of the first amendment. (Adult Correctional Institution, Rhode Island)

1971

U.S. District Court
MEDIA ACCESS

Burnham v. Oswald, 333 F.Supp. 1128 (W.D. N.Y., 1971). Newsmen brought suit seeking an order permitting press interviews of inmates in certain state correctional facilities. The district court held that guidelines applied by corrections officials which resulted in forbidding interviews of inmates after a riot took place was not an infringement of newsmen's first amendment rights. A federal court will not substitute its judgment as to restrictions required for safety and security of an institution for that of prison administrators unless a violation of constitutional rights is clear. (Attica Correctional Facility, New York)

U.S. District Court
CORRESPONDENCE
MAIL

Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Inmate in isolation should have all privileges of other inmates except those that involve mixing with the general population. Attorney for inmate in isolation must be allowed to confer privately with inmate and other inmates who may be witnesses in his behalf. Outgoing mail of security risk, except mail to public officials and attorney of record may be read to determine whether escape plans are being made. Incoming "legal" mail is to be delivered promptly and unopened. Other incoming mail may be inspected for contraband and read to extent necessary to foil escape plans or censor pornography or inflammatory writing. (New Hampshire State Prison, Concord, New Hampshire)

U.S. Supreme Court
BOOKS

Cruz v. Hauck, 404 U.S. 59 (1971) (Per Curiam). Relying on 28 U.S.C. Section 1343 (3), 28 U.S.C. 2201 & 42 U.S.C. Section 1983, inmates of the Bexar County Jail, Texas, initiated this action against the sheriff seeking to restrain the sheriff's interference with their reasonable access to hardbound law books and other legal material. The sheriff contended that limiting hardbound books was part of an overall scheme to prevent smuggling of contraband.

The U.S. District Court for the Western District of Texas dismissed the complaint, without a hearing. A request to appeal in forma pauperis was denied by the judge on the grounds that any appeal would be frivolous, without merit, and not taken in good faith. The Fifth Circuit Court of Appeals also denied the request and the inmates petitioned the Supreme Court for a writ of certiorari contending the denials violated their rights of equal access to the courts.

HELD: In a per curiam opinion the Court granted the motion to proceed in forma pauperis and also granted the petition for a writ of certiorari. Vacating the lower court decision, the case was remanded to the Fifth Circuit Court of Appeals for consideration in light of Younger v. Gilmore, 404 U.S. 15 (1971). 404 U.S. at 59.

NOTE: Justice Douglas in a separate concurring opinion expanding on the brief per curiam opinion stated: "Prisoners are not statistics, known only to a computer, but humans entitled to all amenities and privileges of other persons, save as confinement and necessary security measures curtail their activities. Whatever security measures may be needed regarding books, it is not conceivably plausible to maintain that essential books can be totally banned." 404 U.S. at 61. (Bexar County Jail, Texas)

U.S. District Court
CENSORSHIP

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Arrangements must be made for library services. No censorship of books or periodicals unless they are considered "pornographic." (Lucas County Jail, Ohio)

1972

U.S. Appeals Court
MAIL
CENSORSHIP

Christman v. Skinner, 468 F.2d 723 (2d. Cir. 1972). Where defendants censored mail pursuant to state regulations, and it was not claimed that they acted maliciously or in wanton disregard of plaintiff's rights, defendants are protected from suit by a qualified privilege. Monitoring of non-attorney conversation is not prohibited. (Monroe County Jail, New York)

U.S. District Court
HAIR
LITERATURE

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). Pretrial detainees may not be forced to change the length or manner in which they wear their hair, except where jail officials can demonstrate a health or identification need for so doing. Racial minority publications may be excluded if an official can show prison security is threatened. (Baltimore City Jail, Maryland)

U.S. Appeals Court
MAIL
CENSORSHIP

Gray v. Creamer, 465 F.2d 179 (3rd Cir. 1972). State prison inmates instituted a civil rights action claiming that censorship of mail, confiscation of personal belongings, transfer from one section of prison to another without formal hearing, placement in solitary confinement or administrative segregation, and shutting down of a weekly news letter which was produced through cooperative efforts of "outsiders" and inmates were a violation of their constitutional rights as inmates. Although the district court dismissed the case, holding that the plaintiffs did not present issues for which relief could be granted, the appeals court reversed the lower court decision. (Western Penitentiary, Pittsburgh, Pennsylvania)

U.S. District Court
HAIR

United States ex rel Goings v. Aaron, 350 F.Supp. 1 (D. Minn. 1972). Where "afros" are permitted by regulation, the denial of long hair is upheld against an equal protection argument. (Federal Correctional Institution, Sandstone, Minnesota)

1973

U.S. District Court
CONVERSATION

Diamond v. Thompson, 364 F.Supp. 659 (M.D. Ala. 1973). Political discussions in an administrative segregation unit are a protected first amendment activity, subject only to time and manner restrictions. (Alabama Penal System)

U.S. Appeals Court
MAIL

Frye v. Henderson, 474 F.2d 1263 (5th Cir. 1973). Opening incoming mail violates no inmate right. (United States Penitentiary, Atlanta)

U.S. Supreme Court
VOTING

Goosby v. Osser, 409 U.S. 512 (1973). Class action brought by Philadelphia County prisoners unable to make bail or being held on nonbailable offenses, challenging provisions of the Pennsylvania Election Code, specifically alleging that prohibiting person confined in penal institutions from voting by absentee ballot, failing to provide facilities for that purpose at the prison, and refusing to permit members of the class to leave the prison to register and vote constituted a violation of the equal protection and due process clauses of the fourteenth amendment. Named as defendants were numerous state and municipal officials. A judge for the Eastern District of Pennsylvania dismissed the claim, and ruled the case nonjusticiable as not involving an art. III case or controversy when the commonwealth officials (viewed by the court as the principal defendants) conceded the provision's unconstitutionality. The Third Circuit Court of Appeals differed as to justiciability but affirmed on the ground the claims were wholly unsubstantial in light of McDonald v. Board of Election Comm'rs., 394 U.S.802, ruling that a three judge district court was not required under U.S.C. Section 2281.

HELD: The fact that the commonwealth officials named as defendants conceded the unconstitutionality of the election code provisions did not foreclose the existence of an art. III case or controversy as the municipal officials named as defendants continued to assert the right to enforce the provisions.

HELD: McDonald does not foreclose the subject of the challenge to the election code provisions, as that decision did not deal with a situation of an absolute prohibition against voting by prisoners. The lower court decision was reversed and remanded. (Philadelphia County Prisons, Pennsylvania)

U.S. Supreme Court
CENSORSHIP

Miller v. California, 413 U.S. 15 (1973), reh'g denied, 414 U.S. 881. Obscene material is not protected by the first amendment:

A state offense must...be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which taken as a whole, do not have serious literary, artistic, political, or scientific value. The basic guideline for the trier of fact must be (a) whether 'the average person, applying contemporary community standards' would find that the works, taken as a whole, appeal to the prurient interest...; (b) whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. 413 U.S. at 24.

(Orange County California)

1974

U.S. District Court
FAMILY

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Interference with communication between an inmate and his or her spouse may be unconstitutional as an infringement of rights of family relationships and privacy attached to activities relating to the family. (Mecklenburg County Jail, North Carolina)

U.S. Appeals Court
"PUBLISHER-ONLY"
RULE

McKinney v. Debord, 507 F.2d 501 (9th Cir. 1974). A prison can seize a letter sent to a publisher to protest the fact that the publisher had not delivered certain books when the books would have been in violation of prison rules if they were delivered. (California Prison System)

U.S. Supreme Court
MEDIA ACCESS

Pell v. Procunier, 417 U.S. 817 (1974). Pell, a journalist, together with two other journalists and four California State Prison inmates, sought injunctive and declaratory relief in a 42 U.S.C. Section 1983 action challenging a California Department of Corrections rule promulgated by Procunier, Director of the Department. The rule provided that press and other media interviews with specific individual inmates would not be permitted. The U.S. District Court for the Southern Division of California granted the requested relief, holding that the rule unconstitutionally infringed their first and fourteenth amendment freedoms. The court dismissed the journalists' claims on the ground that other sources of information were available to them. The prison officials and journalists appealed directly to the U.S. Supreme Court.

HELD: "[S]ince [the rule prohibiting media interviews with specific individual inmates] does not deny the press access to sources of information available to members of the general public, we hold that it does not abridge the protection that the first and fourteenth amendments guarantee." 417 U.S. at 835.

REASONING: a. "[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system [Cite omitted]." 417 U.S. at 822.

b. "[A] prison inmate retains those first amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrective system. Thus, challenges to prison restrictions that are asserted to inhibit first amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law." 417 U.S. at 822.

c. "It is in light of these legitimate penal objectives [deterrence, rehabilitation, and security] that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners." 417 U.S. at 823.

d. "When the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations." 417 U.S. at 826.

e. "In the judgment of the state corrections officials, this visitation policy will permit inmates to have personal contact with those persons who will aid in their rehabilitation, while keeping visitations at a manageable level that will not compromise institutional security. Such considerations are peculiarly within the province and professional expertise of corrections officials and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment." 417 U.S. at 827.

f. "[W]hen the issue involves a regulation limiting one of several means of communication by an inmate, the institutional objectives furthered by that regulation, and the measure of judicial deference owed to corrections officials in their attempt to serve those interests are relevant in judging the validity of the regulation." 417 U.S. at 827.

g. "[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." 417 U.S. at 834.

h. "The right to speak and publish does not carry with it the unrestrained right to gather information." 417 U.S. at 834 at 9, Citing Zemel v. Rusk, 381 U.S. AT 16-17.

NOTE: Important to the Court's holding that the rule did not violate the inmates' rights was its finding that adequate alternatives (mail and visitation) existed to provide inmates with access to the outside world. (Department of Corrections, California)

U.S. Supreme Court
MEDIA ACCESS

Saxbe v. Washington Post Co., 417 U.S. 843 (1974). The Washington Post challenged the constitutionality of a policy statement issued by the Federal Bureau of Prisons, which prohibited any personal interviews between newsmen and individually designated federal prison inmates. Agreeing that a policy statement prohibiting all press interviews at medium and maximum security institutions violated the first amendment, the U.S. District Court found for the Washington Post. When the Court of Appeals for the District of Columbia affirmed the district court's decision, the U.S. Supreme Court granted certiorari.

HELD: "We find this case constitutionally indistinguishable from Pell v. Procunier ...and thus fully controlled by the holding in that case: '[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public.'" (Washington Post Company)

U.S. District Court
PRISONER
PUBLICATIONS

The Luparar v. Stoneman, 382 F.Supp. 495 (D. Vt. 1974). Prohibition of an inmate newspaper may not be based on disagreement with its editorial comments. (Vermont State Prison, Windsor, Vermont)

1975

U.S. District Court
CORRESPONDENCE
VISITING

Farmer v. Loving, 392 F.Supp. 27 (W.D. Vir. 1975). A rule prohibiting correspondence between inmates and former inmates is unconstitutional. A rule prohibiting visiting with former inmates is upheld. (Correctional Unit, Virginia)

U.S. District Court
PRETRIAL
DETAINEES

Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). First Amendment rights of detainees may be limited only to the extent necessary to ensure their appearance at trial and to assure the security of the institution. (New York City House of Detention for Men)

U.S. District Court
CORRESPONDENCE

Lawrence v. Davis, 401 F.Supp. 1203 (W.D. Vir. 1975). Correspondence between prisoners in different institutions in the same prison system may be prohibited. (Virginia Department of Corrections, Unit #10)

U.S. District Court
TELEPHONE
MAIL
INDIGENT
PRISONERS

Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). Prisoner access to telephone is ordered. Indigent inmates must be allowed to send five free letters per week. No limitations are allowed on attorney-client mail. Inmates in isolation are entitled to correspond with attorney. (Cuyahoga County Jail, Ohio)

1976

U.S. Appeals Court
CENSORSHIP

Carpenter v. South Dakota, 536 F.2d 759 (8th Cir. 1976). cert. denied, 431 U.S. 931 (1976). Censorship of sex manuals is upheld where prurient interest and sexual arousal are the only purpose of the material, and where material was of questionable literary value. (South Dakota State Penitentiary)

1977

U.S. Appeals Court
CENSORSHIP

Hopkins v. Collins, 548 F.2d 503 (4th Cir. 1977). Restricting a Black Panther Newspaper could be justified with adequate due process. (Maryland Penitentiary, Baltimore, Maryland)

U.S. Supreme Court
PRISONER UNIONS

Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119 (1977). 42 U.S.C. Section 1983 action is brought by Prisoners' Labor Union against the North Carolina Department of Correction, alleging violation of first amendment and equal protection rights due to regulations promulgated by the department. The regulations prohibited inmates from soliciting other inmates to join the union, barred union meetings and all bulk mailings concerning the union from outside sources. A U.S. District Court found merit in the union's arguments and enjoined the Department of Correction from preventing membership solicitation, from refusing receipt of union publications, and ordered that the union be allowed to conduct meetings consistent with those allowed other inmate organizations. Jones, the Secretary of the Department of Correction, appealed to the U.S. Supreme Court.

HELD: The regulations prohibiting the receipt and distribution of bulk mail from the union, prohibiting solicitation of membership, and union meetings do not violate the Equal Protection Clause. 433 U.S. at 6 136.

a. The prison is not a public forum and the department demonstrated a rational basis for distinguishing between the union, which was adversarial in nature, and was in direct conflict with a North Carolina statute prohibiting collective bargaining for inmates and other service-related organizations which performed rehabilitative services. 433 U.S. at 134. **BURGER, C.J. CONCURRING:** "[W]e do not suggest that prison officials could not or should not permit such inmate organizations, but only that the constitution does not require them to do so." 433 U.S. at 137.

GENERAL NOTE: It should be remembered that North Carolina, by statute, specifically made collective bargaining by inmates illegal.

HELD: First amendment rights, as applied to the state through the fourteenth amendment, do not extend protection to prisoners' labor unions. 433 U.S. at 121.

a. The fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the first amendment... Perhaps the most obvious of first amendment rights that are necessarily restricted by confinement, are those associational rights that the first amendment protects outside of prison walls. 433 U.S. at 125, 126.

b. It is clearly not irrational to conclude that individuals may believe what they want, but that concentrated group activity, or solicitation therefor, would pose additional and unwarranted problems and frictions in the operation of the state's penal institution. 433 U.S. at 129.

c. The only first amendment speech right respecting the mail is with regard to bulk mailings, and "it is clear losing these cost advantages does not fundamentally implicate free speech values." 433 U.S. at 130, 131.

d. With regard to solicitation of members, "[i]f the prison officials are otherwise entitled to control the organized union activity within the prison walls, the prohibition on solicitation for such activity is not then made impermissible on account of first amendment considerations, for such a prohibition is then not only reasonable but necessary." 433 U.S. at 132 (Citing Pell v. Procunier, 417 U.S. at 822).

e. As to first amendment associational rights, "[i]f the [department's] views as to the possible detrimental effects of the organizational activities of the union are reasonable, which we conclude they are, then the regulations are drafted no more broadly than they need be to meet the perceived threat--which stems directly from group meetings and group organizational activities of the union... When weighed against the first amendment right asserted, these institutional reasons are sufficiently weighty to prevail." 43 U.S. at 133. (North Carolina Department of Correction)

1978

U.S. Supreme Court
MEDIA ACCESS

Houchins v. KQED, Inc., 438 U.S. 1 (1978). This is a 42 U.S.C. Section 1983 action brought by KQED Broadcasting Company against Houchins, the sheriff of Alameda County, Colorado, claiming deprivation of first amendment rights. KQED was

refused permission to inspect and photograph areas of a county jail where an inmate suicide had taken place. Shortly after the initiation of this action, the sheriff conducted monthly tours, open to the public, of certain areas of the jail. KQED maintained this was inadequate because once the tours were full media representatives might not have access, and photographic and sound equipment were not allowed on the tours.

The U.S. District Court granted a preliminary injunction enjoining Houchins from denying KQED and responsible representatives of the news media access to the jail, and from prohibiting the use of photographic and sound equipment. On interlocutory appeal, the circuit court of appeals affirmed the district court's order, concluding the media had a first amendment and fourteenth amendment right of access to prisons and jails. Houchins sought certiorari from the U.S. Supreme Court. (Reversed and Remanded).

HELD: Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control. Under...[the]...holdings in Pell v. Procunier...[Cite Omitted]...and Saxbe v. Washington Post...[Cite Omitted]..., until the political branches decree otherwise...the media have no special right of access to the Alameda County Jail different from or greater than that accorded the public generally. 438 U.S. at 15, 16. (Alameda County Jail, Colorado)

U.S. District Court
VISITS
TELEPHONE

Owens-El v. Robinson, 442 F.Supp. 984 (W.D. Penn. 1978). Three visits per inmate per week is found acceptable. Telephone system is ordered. (Allegheny County Jail, Pittsburgh, Pennsylvania)

1979

U.S. Appeals Court
EAVESDROPPING

Campiti v. Walonis, 611 F.2d 387 (1st Cir. 1979). Eavesdropping on inmate calls by prison officials is unconstitutional. (Franklin County House of Corrections, Massachusetts)

U.S. District Court
"PUBLISHER-ONLY"
RULE

Cotton v. Lockhart, 476 F.Supp. 956 (E.D. Ark. 1979). The "publisher only" rule is found to be valid as a protection of institutional security. (Arkansas Department of Corrections, Cummins Unit)

U.S. District Court
CENSORSHIP

Goodson v. United States, 472 F.Supp. 1211 (E.D. Mich. 1979). Court finds the National Socialist Bulletin to be racist and may cause violence between races. Its exclusion is proper as it constitutes a threat to security. (Federal Correctional Institute, Michigan)

U.S. District Court
CENSORSHIP

Taylor v. Perini, 477 F.Supp. 1289 (N.D. Oh. 1979). The exclusion of a magazine detailing the fabrication of a weapon because officials found it "inflammatory" is found to be reasonable. (Marion Correctional Institution, Ohio)

1980

U.S. District Court
CENSORSHIP

Brown v. Hilton, 492 F.Supp. 771 (D. N.J. 1980). The seizure of literature on the making of bombs and weapons from an inmate does not violate the first amendment. (New Jersey State Prison, Trenton)

U.S. District Court
TELEPHONE
CORRESPONDENCE
NEWSPAPERS

Hutchings v. Corum, 501 F.Supp. 1276 (W.D. Mo. 1980). Class action is brought challenging the constitutionality of numerous conditions and practices at the county jail. The district court held that: (1) Prison inmates have a first amendment right to communicate with friends and relatives by means of visits, correspondence and telephone calls, but that right is subject to rational limitations in the face of legitimate security interest of the penal institution. (U.S.C.A. Const. Amend.1.) (2) County jail authorities' absolute denial of access to newspapers violated the inmate's first amendment guarantees. (Clay County Jail, Missouri)

U.S. Appeals Court
PRISONER
ASSOCIATIONS

Prest v. Cox, 628 F.2d 292 (4th Cir. 1980). The refusal by officials at the Powhatan Correctional Center in State Farm, Virginia, to recognize an association of prisoners formed for the purpose of bringing lawsuits to challenge prison conditions, has been sustained by the United States Court of Appeals for the Fourth Circuit. The officials at Powhatan routinely allow prisoner associations and cooperate with inmates in planning meetings. However, all groups must apply to the prison administration for recognition and approval prior to receiving official sanction. Although the group in question here, called the Renaissance Committee, had never applied for official approval, it argued that prison officials could not interfere with its activities absent a demonstrated threat to prison security. They also maintained that denial of meeting privileges was akin to a limiting of the right of access to the courts to which they were entitled. The court disagreed. Finding that the prison regulations were a reasonable and effective method of maintaining security within the institution, the court rejected the appeal. (Powhatan Correctional Center, Virginia)

U.S. District Court
TELEPHONE
LANGUAGE

Rodriguez v. Blaedow, 497 F.Supp. 558 (E.D. Wisc. 1980). Security considerations permit the institution to monitor all telephone calls and justify a requirement that all calls be made in English. (Correctional Institution, Waupun, Wisconsin)

U.S. Appeals Court
HATS

St. Claire v. Cuyler, 634 F.2d 109 (3rd Cir. 1980). Rejecting the lower court's reasoning, the Third Circuit Court of Appeals has upheld regulations of the Graterford, Pennsylvania prison, preventing inmates from wearing hats even for religious purposes and from attending religious services while in segregation. The lower court ruled against the prison, holding that while the prison officials imposing the rules were seeking to protect substantial security interests, they had not chosen the "least restrictive alternative" for doing so. Prison officials argued that hats would provide an additional place for the concealment of weapons or contraband. They also stated that some prison cliques use head gear as a means of identification. According to the prison officials, group identification can cause security problems if separate groups exhibit hostility toward each other. The ban on attendance at religious services by prisoners in segregation was based upon the prison's inability to mobilize the manpower to move the prisoners to and from services.

The appeals court first noted that convicted prisoners do not forfeit all their constitutional protections. The court stated, however, that first amendment freedoms may be curtailed when prison officials reasonably believe that exercise of such freedoms would be likely to result in disruption to the prisoner's order and stability. The court then held that the showing of a substantial security interest, without more, was sufficient to shift the burden of proof to the plaintiff. Were the plaintiff to then prevail, it would be necessary to show that the prison's security concerns were unreasonable or its response exaggerated. The court found that no such showing was made here and thus reversed the lower court. The district court's "least restrictive alternative requirement," the higher court said, is not necessary.

(Pennsylvania Prison, Graterford, Pennsylvania)

U.S. Appeals Court
PRISONER
ASSOCIATIONS

Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980). Racial tensions were purportedly running high at the Georgia State Prison, and an inmate committee was formed to negotiate with officials to bring about changes. The two plaintiffs, Ron Streeter and Dwight Lindsey, were named to the committee. Subsequently, negotiations broke down, and the prison chapel was set on fire. Officials at the prison later received information that Streeter and Lindsey had ordered the fires, and they were placed in administrative segregation. The two inmates filed a lawsuit challenging their segregation. They later asked the court to transfer them to another prison, allegedly because their lives were in danger. The district court ordered their transfer, and in this opinion, the trial court's judgment was affirmed. The U.S. Fifth Circuit Court of Appeals stated that in cases like this, trial courts should proceed with caution. In this case, however, there was testimony that a prison officer with a reputation for violence among the inmates had threatened the two plaintiffs. The two men also claimed to have received threats from other inmates and from other officers. The appellate court ruled that under these circumstances, the transfer was proper. However, the appellate court emphasized the fact that under the terms of the lower court order, the inmates were to be returned upon their request or if the officials could demonstrate at a hearing that the conditions of endangerment had been eliminated. (State Prison, Reidsville, Georgia)

U.S. Appeals Court
CENSORSHIP

Trapnell v. Riggsby, 622 F.2d 290 (7th Cir. 1980). Regulations limiting the receipt and possession of nude photographs to those prepared for commercial purposes and so marked is valid. The regulation is neutral in nature and therefore does not violate the first amendment. (Federal Prison, Marion, Illinois)

U.S. Appeals Court
CENSORSHIP

Vodica v. Phelps, 624 F.2d 569 (5th Cir. 1980). Exclusion of one issue of a prison reform association newspaper from the institution because the lead story dealing with a recent disturbance was inaccurate and would tend to rekindle a disturbance which had just been quieted is reasonable and does not violate the first amendment. (Angola State Prison, Louisiana)

1981

U.S. District Court
MAIL
CENSORSHIP

Hearn v. Morris, 526 F.Supp. 267 (E.D. Calif. 1981). State prison officials violated the first amendment rights of a prisoner when they refused to allow him to mail letters addressed to a female minor to whom he was not related by blood or marriage. The rule under which they acted, requiring prior parental approval for such communication, swept unnecessarily broad. The court reasoned that the prison officials could meet the legitimate state interest in facilitating parental censorship of the correspondence by mailing a postcard contemporaneously with the inmate's letter notifying the child's parents of the salient facts concerning the communication and telling them the correspondence could be halted if they objected to it. (Folsom State Prison, California)

U.S. District Court
LITERATURE

Parnell v. Waldrep, 511 F.Supp. 764 (W.D. N.C. 1981). The institutional prohibition against receiving any paperback books, magazines or newspapers violates the first amendment. The regulation is not merely a reasonable time, place, and manner restriction as the defendants suggest. It would be possible to avoid the security problems of these publications (fires and plugging of plumbing) without totally prohibiting them. The actions of the defendants in establishing library services since the filing of the suit and permitting receipt of such material are noted and affect the remedy. Permitting receipt of bibles and religious tracts while prohibiting all other soft cover publications is the establishment of religion in violation of the first amendment. (Gaston County Jail, North Carolina)

U.S. Supreme Court
MAIL

Parratt v. Taylor, 451 U.S. 527 (1981). The plaintiff, an inmate of a Nebraska prison, ordered by mail certain hobby materials. After being delivered to the prison, the packages containing the materials were lost when the normal procedures for receipt of mail packages were not followed. The inmate brought an action in federal district court under 42 U.S.C. Section 1983 against prison officials to recover the value of the hobby materials, claiming that they had negligently lost the materials and thereby deprived the inmate of property without due process of law in violation of the fourteenth amendment. The district court entered summary judgment for the inmate, holding that negligent actions by state officials can be a basis for an action under Section 1983, that officials were not immune from liability, and that the deprivation of the hobby materials implicated due process rights. The court of appeals affirmed. The United States Supreme Court disagreed, holding that the inmate had not stated a claim for relief under 42 U.S.C. Section 1983. Pp. 531-544.

(a) In any Section 1983 action the initial inquiry must focus on whether the two essential elements to a Section 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the constitution or laws of the United States. Pp. 531-535.

(b) Although the inmate had been deprived of property under color of state law, he had not sufficiently alleged a violation of the due process clause of the fourteenth amendment. The deprivation did not occur as the result of some established state procedure, but as the result of the unauthorized failure of state agents to follow established state procedure. Moreover, Nebraska has a tort claims procedure which provides a remedy to persons who have suffered a tortious loss at the hands of the state, but which the inmate did not use. This procedure could have fully compensated the inmate for his property loss and was sufficient to satisfy the requirements of due process. Pp. 535-544. 620 F.2d 30, reversed. (State Prison, Nebraska)

U.S. Appeals Court
PRIVACY

Smith v. Fairman, 678 F.2d 52 (C.D. Ill. 1981), cert. denied, 103 S.Ct. 1879 (1982). Privacy right of an inmate entitles him not to be filmed in his cell. The federal district court has held that the prisoner enjoyed a privacy right in not being filmed in his cell by the news media without his consent, notwithstanding the fact that the film never actually appeared in the telecast. The court noted that "newsmen have no constitutional right of access to prison or inmates beyond that afforded to the general public." See Pell v. Procunier, 417 U.S. 817, 94 S.Ct. 2800 (1974). The warden was not granted summary judgment since it was alleged that he not only authorized the crew to film the plaintiff but led them to the plaintiff's cell where he identified him. (Correctional Facility, Pontiac, Illinois)

1982

State Appeals Court
VISITS

Hickson v. Coughlin, 454 N.Y.S.2d 368 (App. Div. 1982). Cousins may attend special family events when nephews, nieces and common-law wives are allowed. The Supreme Court of Dutchess County, New York, ruled that the commissioner of the Department of Correctional Services and the superintendent of Downstate Correctional Facility could not deny cousins of inmates from attending special family event programs, where others, such as common-law wives, and nieces and nephews were allowed visitation rights. The defendant officials argued that depriving cousins of visitation privileges is within the authority of the commissioner, that his directive had the force of law and that there was no constitutional deprivation or statutory violation. The court found the exclusion of cousins while allowing visitation rights to common-law wives, and nephews and nieces to be inconsistent and directed the commissioner to revise the directive to include cousins. (Downstate Correctional Facility, New York)

U.S. Appeals Court
LITERATURE
NEWSPAPERS

Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982). A jail rule limiting pretrial detainees to nonpornographic, soft bound, nonpictorial reading material, such as Reader's Digest and the Bible, violates the first amendment rights of the detainees. The rule could not be justified on the theory that newspapers would be more likely to be used to start toilet fires or that hard bound books could cause injury by being thrown. Furthermore, the sheriff did not enjoy immunity with respect to suit for damages because of violation of the first amendment rights. Nominal damages of one dollar were awarded. (Tippecanoe County Jail, Indiana)

1983

U.S. Appeals Court
COMMUNICATING
WITH PRISONERS

Jackson v. Meachum, 699 F.2d 578 (1st Cir. 1983). Segregated inmates are not entitled to communicate with other inmates. The First Circuit Court of Appeals has agreed with many jurisdictions that providing an inmate in segregation confinement with satisfactory conditions, but with virtually no communication or association with fellow inmates does not constitute cruel and unusual treatment.

The suit was brought by an inmate who was placed in the most secure housing unit of a state hospital for being suicidal, disruptive, and violent. The plaintiff alleged that denial of any contact with other prisoners was cruel and unusual punishment and violated the Eighth Amendment.

The factor of psychiatric deterioration brought on by the condition of confinement had been addressed by the Fifth Circuit, in Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977):
The mental, physical, and emotional status of individuals, whether in or out of custody, do (sic) deteriorate and there is no power on earth to prevent it...We decline to enter this uncharted bog. If the state furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under amendment eight.

On this basis the appellate court reversed the district court's decision to provide the inmate with several hours a day of interaction with other inmates and stated:

We do not suggest that the district court's prescription of several hours of inmate contact a day is a mere 'amenity,' to use the language of Newman. It might very well be helpful therapy. But to accept plaintiff's proposition that there is a constitutional right to preventive therapy where psychological deterioration threatens, notwithstanding that the physical conditions of confinement clearly meet or exceed minimal standards, would make the eighth amendment a guarantor of a prison inmate's prior mental health. Such a view, however civilized, would go measurably beyond what today would generally be deemed 'cruel and unusual.'

The court stated that a prison could not be responsible for the inmates' feelings of depression or hopelessness that may be inevitable by-products of incarceration. (Bridgewater State Hospital, Massachusetts)

1984

U.S. District Court
TELEPHONE
MAIL
VISITS

Johnson v. Galli, 596 F.Supp. 135 (D. Nev. 1984). Federal court rules that county jail prisoners have right to "reasonable access" to telephones and to law library or legal assistance. In a suit which alleged a range of constitutional violations, the plaintiff prisoners received several federal court judgments in their favor. Although the court noted that access to a telephone has not been established as a constitutional right, it ruled that jail prisoners should have reasonable access because no legitimate governmental interest was shown for depriving access. Current practices sometimes result in delays of two weeks for the provision of a requested call to a prisoner.

The court found that it was "...unreasonable to expect a lay person to know the specific law books he will need to research a legal problem, so that he might request them from a guard," citing Martino v. Carey, 563 F.Supp. 984 (D. Ore. 1983). As a result, prisoners who do not have legal assistance will be allowed access to the county law library.

The court ruled against the county defendants who sought summary judgment in the areas of food preparation and service, telephone use, opening of mail, access to legal materials, and recreation and exercise. The court granted summary judgment for the defendants in the areas of contact visits, reading materials, educational, vocational and voluntary work programs, training of personnel, personal property, fire safety, and unsanitary conditions. (Washington County Jail, Nevada)

State Appeals Court
VISITOR SEARCHES

State v. Balser, 460 So.2d 74 (La. App. 1984). Strip search of visitor upheld by Louisiana court. The mother of a prisoner was routinely pat searched prior to a visit and was ordered to return several items to her car. Upon her return, she was taken to a private room for an additional search (strip), which produced several bags of marijuana in her sock. She was subsequently tried and sentenced to six months of hard labor.

The appeals court upheld the searches because signs were posted stating that visitors were subject to personal searches, her prior knowledge of procedures from previous visits, and her initial written consent to submit to personal searches. (Louisiana State Penitentiary)

1985

State Appeals Court
MAIL

Millburn v. McNiff, 36 CrL 2441 (N.Y. Sup. Ct. App. Div. 1985). New York correctional facility barred from inspecting outgoing business mail, including mail to the media. After three letters to a local newspaper were returned to a prisoner at a state facility because administrators claimed they contained false information, the prisoner filed suit in the United States District Court. The federal judge finding the practice of inspecting all outgoing "business" mail, including mail to media representatives, inconsistent with prisoner constitutional rights, barred the practice. (New York Correctional Facility)

U.S. Appeals Court
VISITING

Morrow v. Harwell, 768 F.2d 619 (5th Cir. 1985). Law library provisions inadequate; visiting policies questioned. Prisoners at the McLennan County Jail filed suit several years ago alleging constitutional violations. The county provides access to legal materials through a weekly bookmobile visit supplemented by assistance from two law students. The court of appeals found this method inadequate. The court concluded that visiting facilities were adequate, and that the county had no obligation to build hospitable or convenient visiting areas. It upheld the county practice of allotting one hour more of visiting to male prisoners than female prisoners because males comprised over ninety percent of the population. The court found visiting policies unconstitutional which prohibited weekend visiting and prevented visits by minors. (McLennan County Jail, Texas)

U.S. Appeals Court
VISITOR SEARCH

Thorne v. Jones, 765 F.2d 1270 (1st Cir. 1985), cert. denied, 475 U.S. 1016. Strip search of prisoners' mother upheld, search of father not proper but no civil liability results. Prison officials required the mother of two prisoners, one of whom was known to be receiving drugs, to submit to a strip search as a condition of visiting her sons. The plaintiffs sued, alleging that the requirement infringed on their first amendment rights for association. The U.S. Court of Appeals for the First Circuit held that the search requirement for the mother, who was suspected of supplying drugs, was constitutional because it was reasonably related to security concerns. The court noted that the Constitution affords convicted prisoners and their families no absolute right of visitation, and that any qualified right which may exist is derived from a source other than the first amendment. The court held that the fourth amendment was infringed when the prisoners' father was required to submit to a strip search to visit his sons, because officials had no suspicion as to the father. Since the law on this point was not clear in late 1981 (when the search took place), the officials escaped civil liability according to the court. (Louisiana State Penitentiary)

U.S. District Court
MEDIA ACCESS

Travis v. Lockhart, 607 F.Supp. 1083 (D.C. Ark. 1985). Federal court determines correspondence with media is "privileged." Prisoners in a maximum security unit in Arkansas filed suit in federal court to challenge the practice of scanning outgoing and incoming mail to and received from media representatives. As a result, the Department of Corrections was ordered to adopt policies or regulations which conform with the court's decision that correspondence with media representatives be treated as "privileged" mail. Current department practices for privileged correspondence allow prisoners to show the unsealed correspondence to an officer, and then to seal the envelope in the officer's presence. Incoming privileged mail is only inspected for contraband in the presence of the prisoner. (Tucker Maximum Security Unit, Arkansas)

U.S. District Court
"PUBLISHER ONLY"
RULE

Wagner v. Thomas, 608 F.Supp. 1095 (D.C. Tex. 1985). Publisher only rule upheld; strip searching prisoners in front of fellow prisoners upheld. A federal district court has upheld several practices of a Texas county jail. The court found that the requirement that all magazines and books received by inmates must be sent directly from the publisher or authorized distributor did not violate prisoners' civil rights. The court further held that the jail's rule prohibiting prisoners from receiving magazines and books depicting nudity or pandering to sexual interest did not violate prisoners' civil rights in light of evidence that the material could lead to violence among prisoners. (Dallas County Jail, Texas)

1986

U.S. District Court
MAIL
INSPECTION OF
MAIL
OPENING OF MAIL

Evans v. Jenne, 660 F.Supp. 426 (S.D. Miss. 1986). By alleging that legal mail from the Department of Corrections was opened, a prisoner stated a legal claim under federal civil rights law. He claimed that mail from the Mississippi Department of Corrections concerning his probation violation had been opened by prison officials. The federal district court refused to dismiss the inmate's complaint concerning the opening of his legal mail because prison regulations state that incoming mail from "privileged communicants" such as attorneys, courts or government agencies was not to be opened unless believed to be counterfeit or contain contraband--and then only in the presence of the inmate after filing a form noting the reason why opened. Prison regulations concerning the opening and inspection of other incoming non-legal personal mail were upheld as justified by security requirements. (Jackson County, Mississippi)

U.S. Appeals Court
MEDIA ACCESS
STAFF

Fiorillo v. U.S. Dept. of Justice, Bureau of Prisons, 795 F.2d 1544 (Fed. Cir. 1986). A correctional officer's statements to the press, suggesting that a female inmate and a female employee had been sexually attacked five years previously, did not qualify as a protected first amendment speech. Although portions of the officer's speech related to items about which the public was concerned in years past, the news was stale, and the officer's disclosures were made for personal reasons and not to inform the public of matters of general concern. Accordingly, prison authorities could consider these statements in deciding to demote the officer.

The court concluded that the guard's statements to the press concerning a lawsuit which he had instituted because he was being denied promotion for having expressed criticism about prison conditions were made on behalf of the guard, and not "on behalf of the institution," so that he did not violate the rule prohibiting dissemination of material to the press on behalf of the institution. (Federal Correctional Institute at Terminal Island, California)

U.S. District Court
FAMILY
VISITS

Ford v. Beister, 657 F.Supp. 607 (M.D. Pa. 1986). A prison ban on "child" visitations with inmates housed in maximum security at the state correctional facility is legal and does not violate constitutional rights according to a federal district court. Prison officials contended, and the court agreed, that it is dangerous for young people (under 18 years of age) to travel into the Restricted Housing Unit located in the center of the facility. The court stated: "...the ban in this case is reasonable and the plaintiffs have not in any way dispelled the concerns and justifications for electing to limit visits to those 18 years of age or older. Consequently, assuming arguendo, that a constitutional right is implicated, nothing in the record indicates other reasonable methods of permitting child visitation to those in restricted housing without compromising the internal security of the prison." (State Correctional Institution, Dallas, Pennsylvania)

U.S. District Court
HAIR

Fromer v. Scully, 649 F.Supp. 512 (S.D.N.Y. 1986). An inmate brought action against prison officials to challenge the constitutionality of the directive that limited the length of a beard to one inch. The district court held that: (1) the inmate had established a sincere religious belief in growing a beard, and (2) the directive that limited the length of the inmate's beard to one inch was greater than necessary to effectuate governmental objectives of identification of inmates, control of contraband, safety, and hygiene, and, therefore, the restriction violated the inmate's free exercise rights. The inmate's religious practice of growing a beard longer than one inch was not presumptively dangerous, but was totally denied by prison directive that limited length to one inch, and, therefore, required prison officials to show that application of a beard restriction was necessary to further important governmental interest, and that limitations on religious freedoms occasioned by restriction were not greater than necessary to effectuate the governmental objective involved. (Department of Correctional Services, New York)

U.S. Appeals Court
MAIL

Gaines v. Lane, 790 F.2d 1299 (7th Cir. 1986). Appeals court upholds limitations on free postage for prisoner legal mail and other mail practices. In two separate cases, prisoners challenged Illinois Department of Corrections policies regarding prisoner mail. Both complaints were dismissed and were consolidated on appeal. The appeals court held that: (1) regulations governing nonprivileged mail were constitutionally valid (mail is censored, reproduced or withheld if it presents a threat to prison security); (2) regulations which allow incoming privileged mail to be opened to determine that nothing other than legal or official matter was enclosed was justifiable; (3) the first amendment requires only that media mail be treated like all other nonprivileged mail; and (4) regulations which limited the number of first class letters mailed at state expense to three per week for indigent prisoners were "a reasonable attempt to balance the right of prisoners to use the mails with prison budgetary considerations....it is indisputable that inmates must be provided at state expense with the basic material necessary to draft legal documents and with stamps to mail them...however, although prisoners have a right of access to courts, they do not have a right to unlimited free postage." (Illinois Department of Corrections)

State Appeals Court
COMMUNICATIONS
WITH PRISONERS

Guy v. State, 396 N.W.2d 197 (Iowa App. 1986). An inmate was found guilty by the prison adjustment committee of sexual misconduct and misuse of communications. The district court denied the inmate's application for post-conviction relief, and the inmate appealed. The Court of Appeals held that the adjustment committee reasonably balanced the inmate's first amendment rights with the prison disciplinary policy in finding that the inmate committed sexual misconduct and misuse of communications after a letter proposing sexual contact with another inmate was found in the inmate's cell, even though the letter had not yet been sent. A prison rule that an inmate who puts sexual proposition in a letter misuses means of communications does not require that the letter be sent, but only that the letter be written. (Men's Reformatory in Anamosa, Iowa)

U.S. District Court
PRIVACY
MEDIA ACCESS

Huskey v. National Broadcasting Co., Inc., 632 F.Supp. 1282 (N.D. Ill. 1986). A prison inmate stated a claim against a television broadcasting company for invasion of privacy. The prisoner was filmed without his consent while he was in an exercise cage. The prisoner was wearing only gym shorts, leaving several distinctive tatoos exposed. Injunctive relief to prevent a television broadcasting company from broadcasting footage containing pictures of the prisoner would not necessarily be improper. Injunction against telecasting that footage would be quite narrowly-tailored to serve the prisoner's privacy interests, without unduly stepping on the television broadcasting company's interest of publicizing the conditions at the prison, and the balancing test strongly favored injunctive relief, for the probability of evil was 100 percent upon publication. (Marion County Jail, Illinois)

U.S. District Court
MAIL
LITERATURE

Jackson v. Brookhart, 640 F.Supp. 241 (S.D. Iowa 1986). A prisoner, whose mail (except for religious or legal mail) was withheld for the 286 days she served in disciplinary detention, as a result of thirty-eight separate disciplinary proceedings, brought action against prison officials alleging violation of her first amendment right to read and possess literature. The district court held that the prison policy furthered a substantial governmental interest in deterring future misconduct and limitation on the prisoner's first amendment freedoms and was no greater than was necessary or essential to governmental interests involved. (Iowa Medical and Classification Center)

U.S. District Court
COMMUNICATION
WITH PRISONERS

Jeffries v. Reed, 631 F.Supp. 1212 (E.D. Wash. 1986). A death row inmate challenged the constitutionality of his transfer to the intensive management unit of the prison and also challenged the conditions of his incarceration in that unit. On cross motions for summary judgment, the district court held that: (1) the transfer of an inmate to a unit on the grounds that he inherently imposed a security risk in light of his sentence did not deny the inmate due process; (2) inspection of the inmate's legal mail by staff of the unit did not violate the inmate's rights of free speech or equal protection; (3) digital rectal search which the inmate underwent prior to being transferred to the unit and strip and visual body-cavity searches he underwent each time he left his cell did not constitute unreasonable searches and seizures; (4) denial of contact with other inmates did not violate the first, sixth, or fourteenth amendments; and (5) the telephone schedule, permitting the inmate to place a collect call to his attorney at least three times per week between the hours of 8:00 a.m. and 4:00 p.m. did not deny the inmate adequate access to counsel and the courts. (Intensive Management Unit, State Prison, Washington)

U.S. Appeals Court
MEDIA ACCESS

Jersawitz v. Hanberry, 783 F.2d 1532 (11th Cir. 1986), U.S. cert. denied in 107 S.Ct. 272. Appeals court upholds prison regulation which limits prisoner interviews with representatives of the news media. A self-styled independent journalist who was refused access to a federal prisoner filed suit alleging the regulation violated his rights. The rule limited interviews with prisoners to representatives of the news media whose principal employment was to gather or report news for a radio or television news program of a station holding a FCC licence. Noting that newsmen have no constitutional rights of access to prisons or their prisoners beyond that afforded the general public, the appeals court affirmed the lower court decision. (Atlanta Federal Penitentiary)

U.S. District Court
RELIGIOUS
LITERATURE

Lawson v. Wainwright, 641 F.Supp. 312 (S.D. Fla. 1986). A class of Hebrew Israelite inmates sought declaratory and injunctive relief from prison officials' refusal to allow them to receive religious literature or engage in certain religious practices. The district court held that the inmates' right to free exercise of religion had been violated, in complete absence of objective evidence that introduction of literature or allowance of practices would result in violence, disruption, or threat to the prison security. Validity of a state regulation, or a particular application thereof, which restricts or prohibits an inmate's exercise of a fundamental right must be evaluated under a "least restrictive means" test, not a "rational relation" standard of review. An outright ban of access to literature of Hebrew Israelite faith by prisoners, though it bore a rational relation to a substantial governmental interest of avoiding strife among the inmates, was greater than necessary restriction on the inmates' right to freely exercise their religion. Prison officials had not demonstrated that Hebrew Israelite reading materials and religious practices were substantially detrimental to the state's interest in security and order within the prison, as reflected in the administrative rule prohibiting "dangerously inflammatory" reading material, in complete absence of any objective evidence of violence or disruption related to inmates' past exposure to those materials and practices. The various publications turned their attention to the mistreatment of blacks under the lies of white people. Various publications were entitled, **100 Years of Lynchings**, **Let My People Go**, and **You Are Not a Nigger - Yahweh, God of Gods**. (Yahweh was a god who is said to return to free blacks from "white evil.") This material was not to be banned merely because of philosophical differences held by the forty-four chaplains at the prison, ruled the court. (Hendry Correctional Institution, Florida)

U.S. Appeals Court
HAIR

Shabazz v. Barnauskas, 790 F.2d 1536 (11th Cir. 1986), U.S. cert. denied in 107 S.Ct. 655. Rules prohibiting beards upheld; officers actions which countermanded medical instructions did not rise to level of constitutional violation. A state prisoner filed a civil rights suit attacking the action of state officers in requiring him to shave off his beard. The prisoner also brought a suit alleging violation of eighth amendment by prison guards who had allegedly subjected him to cruel and unusual punishment by taking disciplinary action against him despite his valid medical excuse from prison shaving regulations. The United States District Court for the Middle District of Florida dismissed the suits, and the prisoner appealed. Following remand, the district court entered judgment for the defendants and the inmate appealed again. The court of appeals held that: (1) even if the prisoner was required to shave when, on instructions from physician, he should not have been required to, the action did not rise to the level of cruel and unusual punishment forbidden by the eighth amendment, and (2) the prison shaving regulation, to the extent that it prohibited an inmate at a maximum security prison from growing a beard in conformity with his religious beliefs, was the least restrictive means of facilitating identification of escaped inmates, and therefore, did not violate first amendment.

U.S. Appeals Court
TELEPHONE

Strandberg v. City of Helena, 791 F.2d 744 (9th Cir. 1986). Failure to provide arrestee with access to telephone within first thirty minutes of detention does not violate constitutional rights. The 22-year-old decedent was arrested for traffic violations and was taken to the police station where he was confined during the booking procedure. Within approximately thirty minutes, he was found dead, hanging from the ceiling of his cell. His parents sued the city, alleging that their son's civil rights were violated because he was denied his right to free speech. They named as defendants the city, the chief of police, the police dispatcher, and all officers on duty the evening of the death. The lower court found that the short time in which the decedent was in custody did not give rise to constitutional violations. As the decedent had not yet been charged, his right to counsel had not yet attached. Noting that courts have recognized detainees' and prisoners' first amendment rights to telephone access, but that these rights are subject to rational limitations in the face of legitimate security interests, it found that the limitations of access were reasonable, and therefore no first amendment violation resulted. The appeals court affirmed the lower court decision. (City of Helena Police Department, Montana)

U.S. Appeals Court
LITERATURE

Travis v. Norris, 805 F.2d 806 (8th Cir. 1986). A publication entitled, "Gorilla Law" was properly banned from inmates in a maximum security unit, upheld the Eighth Circuit U.S. Court of Appeals. It was determined that the publication was contraband because it depicted prisoners as "vengeful victims" and "advocated violence and depicted prison life as a constant struggle between inmates and prison officials, thereby creating a serious security concern and inhibited rehabilitation." The majority of the court found the tone of the publication to be relentlessly hostile toward authority and that it promoted the "notion that prisoners are hapless victims of society, and speaks of their 'motivation of burning revenge,'" it said. A dissenting judge insisted that since there was "no rehabilitation program in the unit, it was difficult to understand how a nonexistent program can be interfered with." Also, no unit of the Arkansas prison system has a grievance procedure that was approved by the Department of Justice. He said that the publication called for prisoners to file grievances and to challenge conditions in an organized way, and that the overall tone was "harmless." (Tucker Maximum Security Unit of the Arkansas Department of Corrections)

U.S. District Court
TELEPHONE
PRIVACY

U.S. v. Clark, 651 F.Supp. 76 (M.D. Pa. 1986), cert. denied, 109 S.Ct. 2082. Defendants indicted on 35 counts relating to alleged introduction of marijuana into federal penitentiary moved to suppress audio tapes. The federal district court held that: (1) the recordings qualified under law enforcement exclusion; (2) monitoring and recording of phone calls between inmates and non-inmates did not constitute unreasonable search and seizure; (3) use of tape recordings of married defendants' conversations would not violate husband-wife privilege; and (4) recordings were not of such poor quality as to warrant their suppression. The court noted that a prison employee qualifies as "investigative officer," exempt from coverage of statute generally prohibiting interception of "any wire or oral communication," because such officers are empowered by Bureau of Prison Regulations to conduct investigations relating to prison security. The court reasoned that application of Fourth Amendment depends on whether person invoking its protection can claim justifiable, reasonable or legitimate expectation of privacy that has been invaded by government action; monitoring and recording of phone calls between inmates and non-inmates did not constitute unreasonable search and seizure, because defendants had no reasonable expectation of privacy during conversations placed from penitentiary telephones. (Federal Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
TELEPHONE

United States v. Vasta, 649 F.Supp. 974 (S.D. N.Y. 1986). The recordings of telephone conversations to and from a United States prison did not violate the first or fourth amendment rights of the defendants. The policy furthered one or more of the substantial governmental interests of security, order, and rehabilitation and were not more broad than necessary to protect those interests. Moreover, the defendants, as prisoners, had no legitimate expectation of privacy. (New York)

U.S. Appeals Court
COMMUNICATION
WITH
PRISONERS

Vester v. Rogers, 795 F.2d 1179 (4th Cir. 1986), cert. denied, 482 U.S. 916. A prison rule, which prohibited correspondence between inmates in different penal institutions without permission of the wardens involved, did not operate as an absolute denial of free speech, nor did it affect the rights of nonprisoners. Accordingly, even assuming that there were less restrictive means of reducing institutional tensions and impeding the exchange of communications relating to unlawful activity, the rule would be upheld as not violative of prisoners' first amendment rights. (Powhatan Correctional Center, Virginia)

1987

U.S. Appeals Court
CENSORSHIP
CORRESPONDENCE

Brooks v. Andolina, 826 F.2d 1266 (3rd Cir. 1987). A federal appeals court ruled that (1) it is unlawful to place an inmate in segregation simply because he wrote a letter complaining of a female employee's search of a visitor, (2) prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights, and (3) the inmate was not entitled to lost wages. An inmate complained in a letter to the NAACP that a female correctional officer searched his visitor in a seductive manner. He was issued a misconduct report for disrespect toward a staff member, and after a hearing, was sentenced to 30 days punitive segregation. The Third Circuit Court of Appeals noted that the Supreme Court has clearly ruled that prison officials may not censor inmate correspondence to eliminate unflattering or unwelcome opinions, (Procunier v. Martinez, 416 U.S. 396). Further, prison officials cannot punish inmates for statements made in letters to outsiders, even if the inmate could be punished if he made the statements orally to a prison employee. The court continued that if regulations concerning censoring are in existence, they must be for the purpose of security, order, or rehabilitation. Because prison officials cannot censor unflattering statements in letters to outsiders, they cannot punish an inmate for the contents of such letters; therefore, the action taken against Brooks for writing the letter violated his constitutional rights. (State Correctional Institute at Pittsburgh, Pennsylvania)

U.S. Appeals Court
HATS

Butler-Bay v. Frey, 811 F.2d 449 (8th Cir. 1987). Inmates filed a civil rights action alleging that they had been denied the free exercise of their religion. The appeals court found in favor of prison officials when it agreed that prison rules preventing inmates of the Moorish Science Temple of America from wearing fezes were reasonable because the headwear could be used to conceal contraband. The court also upheld the prison's requirements that a guard be present at meetings and that minutes and membership lists should be provided to prison officials. The court found that the practices and regulations were not discriminatory, and did not violate the inmates' constitutional rights. (Missouri Eastern Correctional Center)

U.S. Appeals Court
CENSORSHIP
LITERATURE

Espinoza v. Wilson, 814 F.2d 1093 (6th Cir. 1987). Because it threatened institutional security, a federal appeals court affirmed a district court's ruling and held that inmates at a medium security prison were not entitled to receive publications advocating a homosexual lifestyle. According to the court, unless they are of a medical or religious nature, publications advocating homosexuality are banned from prison for reasons of security. The court agreed with the warden's testimony that publications advocating a homosexual lifestyle angered fellow inmates, but it rejected the warden's second reasoning that if the plaintiff inmates received these publications, other inmates would know that they were homosexuals and would cause them harm, because those inmates were already admitted homosexuals within the prison, the court explained. Under the prison rules, not all homosexual oriented publications were withheld from the inmates; only materials that approved of homosexuality were banned. (Luther Luckett Correctional Complex)

State Supreme Court
MARRIAGE
VISITS

In Matter of Miner v. N.Y. State Dept. of Correctional Services, 524 N.Y.S.2d 390 (N.Y. 1987), cert. denied, 109 S.Ct. 364, reh'g. denied, 109 S.Ct. 825. A state supreme court denied an inmate the right to participate in a "family reunion program" allowing periods of contact visitation with spouses because he was married while incarcerated for a life sentence. The court held that the out-of-state proxy marriage of the inmate would not be recognized. The court restated the principle that a marriage entered into by an incarcerated life-sentence inmate is void from inception because of the legislative declaration of "civil death" of the inmate. (New York State Dept. of Corr. Services)

U.S. District Court
BOOKS

Jackson v. Elrod, 671 F.Supp. 1508 (N.D.Ill. 1987). A pretrial detainee challenged a policy of barring the receipt of all hardcover books and failing to notify detainees of the rejection of these books when mailed to them by filing a federal lawsuit. A federal district court ruled that a policy of prohibiting all hardcover books, regardless of content or source, could not meet a test of being reasonably related to a legitimate penological interest. The court noted that claims that hardcover books provided a security problem, in that they could be used to conceal contraband, had to be rejected because, as the court noted, there were no specific instances of such problems cited and contraband could be concealed in clothing or other items which inmates were allowed to receive. The court also ruled that the jail must notify inmates when books are received and rejected. The court felt this could be done by duplicating a notice that is sent to the books' senders indicating the rejection, and sending a copy to the inmates. While the court held that the jail's corrections head, security chief and division superintendents were properly liable for making and administering these policies, it ordered further proceedings on whether the sheriff was liable, since the policy differed from a written handbook sent out by his office. (Cook County Jail, Illinois)

U.S. Appeals Court
PRIVACY

Kent v. Johnson, 821 F.2d 1220 (6th Cir. 1987). Assuming that there was some right to privacy retained by state inmates and that right protected them from being forced unnecessarily to expose their bodies to guards of the opposite sex, an inmate complaining of that practice state a constitutional claim upon which relief could be granted under the Fourth Amendment, according to a federal appeals court. By alleging that female prison guards allowed themselves unrestricted views of an inmate's naked body in the shower, at close range and for extended periods of time, to retaliate against, punish and harass him for asserting his right to privacy, the inmate stated a cause of action under the Eighth Amendment for cruel and unusual punishment. The court ruled that the prison policy must be reviewed to determine if it is reasonably related to a legitimate penological interest. The district court had initially dismissed the complaint since an opinion issued in Griffin v. Michigan Department of Corrections, 654 F.Supp 690 (E.D.Mich. 1982), a Title VII case, required the Michigan Department of Corrections to allow female guards to patrol housing units of male prisons. The appeals court reversed the dismissal and ordered the consideration of other information--including the inmate's religious beliefs and practices and whether he may have some right to privacy with respect to his genitals must be examined. The court noted that the recent Supreme Court decision in Turner v. Safely, 107 S.Ct. 2254 (1987) requires consideration of a regulation to determine if it is reasonably related to a legitimate penological interest when it infringes on an inmate's constitutional rights. The court ruled that if the facts of Kent's case demonstrate that he has a valid religious belief in not being viewed naked by female officers and that such viewing is an unreasonable search, an invasion of his privacy or constitutes cruel and unusual punishment, the balancing test under Turner must be applied. (State Prison for Southern Michigan)

U.S. District Court
CONVERSATION

Montgomery v. Kelly, 661 F.Supp. 1051 (W.D.N.Y. 1987). Prisoners challenged a prison rule that prohibited talking while moving in line within the facility, alleging violation of their First Amendment rights to speech and to practice their Islamic faith by giving salutations. Prison officials argued that the rule was necessary to maintain order, personal safety and discipline and that the prisoners had other reasonable opportunities to practice their religious beliefs. The federal court denied a motion to dismiss the case noting that prisoners do not lose their First Amendment rights in the prison setting, finding that prison officials had failed to meet the burden of proof necessary to support the reasonableness and propriety of the rule. (Attica Correctional Facility, New York)

U.S. Appeals Court
PRISONER
ASSOCIATIONS

Moore v. Clarke, 821 F.2d 518 (8th Cir. 1987). A federal appeals court ruled that a Nebraska inmate's suit that challenged the disbanding of a prison's boxing program as being the result of racial discrimination sufficiently alleged a civil rights deprivation claim. The complaint alleged that the defendants discontinued the boxing program because of racial animus, that most of the participants in the program had been black, and that the defendants stated no reason for having taken their action. (Nebraska State Penitentiary)

U.S. Appeals Court
CENSORSHIP
MAIL
RELIGIOUS
LITERATURE

Murphy v. Missouri Department of Corrections, 814 F.2d 1252 (8th Cir. 1987). Inmates brought action against prison officials because they were not allowing them to receive mail and publications relating to Aryan Nations. Prison officials said they denied the prisoners access to this material because they were enforcing the policy on the basis that any support of white supremacy increased tension and racial unrest, and threatened prison security. The court ruled, however, that only those materials that advocate violence or "are so racially inflammatory as to be reasonably likely to cause violence at the prison" may be restricted in the mail. Therefore, the broader mail policy of the prison violated prisoner rights to free speech and to the free exercise of religion. As a

result, the court told prison officials they must open, read and review each piece of mail to determine if it advocates violence or is racially inflammatory. The court summarized that censorship of inmate mail must not only be justified by the legitimate need for prison security, but must also be no more restrictive than necessary to protect prison security. (Missouri Training Center for Men)

U.S. Appeals Court
COMMUNICATION
WITH PRISONERS

Rios v. Lane, 812 F.2d 1032 (7th Cir. 1987). A federal appeals court denied prison officials a defense of qualified immunity for disciplining an inmate pursuant to a vague rule forbidding gang activity. The inmate was given no prior warning that his conduct in passing a 3" by 5" notecard to another inmate containing information about the schedule of Spanish speaking radio stations violated any regulation. The court explained that aside from the sparse text of the rule itself, there was no material available to fully explain what conduct was prohibited by the rule. (Graham Correctional Center, Illinois)

U.S. Appeals Court
NEWSPAPERS

Sizemore v. Williford, 829 F.2d 608 (7th Cir. 1987). A federal inmate brought action against various prison officials for violation of his First and Fourteenth Amendment rights by arbitrarily denying him access to certain published materials. A federal appeals court held that the inmate's complaint that his copies of a daily newspaper were permanently withheld and intentionally never delivered by prison officials violated his substantive rights guaranteed under the First Amendment rights to receive news and information, in the absence of any security-related or other legitimate justification. (Marion Federal Prison, Illinois)

U.S. Appeals Court
COMMUNICATION
WITH PRISONERS

Sturm v. Clark, 835 F.2d 1009 (3rd Cir. 1987). An attorney who was the sole subject of restrictive directives at federal correctional institution commenced action for damages and injunction for deprivation for her constitutional rights. The federal appeals court held that: (1) due process was not violated by directives, absent showing of more than damage to reputation and financial harm resulting therefrom; (2) the attorney stated First Amendment claim based on restriction precluding her from speaking to visitors at prison and to those inmates for whom she did not have visitation permit; and (3) the attorney also stated equal protection claim based on visiting hours directives. According to the court, the attorney's due process rights were not violated by directives at federal correctional institution which restricted her visits to designated times and upon 24 hours notice as a result of her "disruptive and unprofessional behavior" and which allegedly resulted in prison inmates' unwillingness to retain her as counsel. (Allenwood Federal Prison Camp)

U.S. Supreme Court
MARRIAGE

Turner v. Safley, 107 S.Ct. 2254 (1987). A class action was brought to determine the constitutionality of marriage regulations. The U.S. District Court declared that the regulations were unconstitutional, the appeals court affirmed, and the plaintiffs petitioned for a writ of certiorari. The Supreme Court found that the inmate marriage regulation, which prohibited inmates from marrying other inmates or civilians unless the prison superintendent approved the marriage after finding that there were compelling reasons for doing so, was not reasonably related to any legitimate penological objective, and was facially invalid as a denial of inmates' constitutional rights. (Missouri Division of Corrections)

U.S. Appeals Court
TELEPHONE
PRIVACY
EAVESDROPPING

U.S. v. Amen, 831 F.2d 373 (2nd Cir. 1987), cert. denied, 108 S.Ct. 1573. Defendants were convicted in federal district court of drug offenses and they appealed. The appeals court ruled that: (1) taping of inmates' telephone calls was impliedly consented to by inmates who were on notice of the monitoring procedures at the prison from at least four sources; (2) inadvertent destruction of 27 out of 253 tape recordings of conversations did not require imposition of sanctions; (3) tape recordings of inmate's conversations did not violate the Fourth Amendment; (4) evidence of earlier substantive convictions were admissible to show that the defendant directed a fifth person so as to violate the continuing criminal enterprise statute; (5) one cannot aid and abet a continuing criminal enterprise; and (6) one cannot be sentenced both for conspiracy and continuing criminal enterprise. The court noted that prison inmates have no reasonable expectation of privacy. (Federal Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
TELEPHONE
EAVESDROPPING

U.S. v. Montgomery, 675 F.Supp. 164 (S.D.N.Y. 1987), cert. denied, 109 S.Ct. 846. The interception and taping of a telephone call made by a pretrial detainee from a correctional center did not violate Title III or the fourth amendment. The detainee's use of the telephone after ample notice of the interception system amounted to implied consent to the monitoring under Title III. Moreover, the monitoring of the conversation was a reasonable seizure, given the ample notice to the detainee of the monitoring. Monitoring and taping of pretrial detainee's telephone conversations did not violate his fifth amendment right to be free of restrictions amounting to punishment. The detention center's taping and monitoring system was related to a legitimate governmental objective of institutional security, and could not be regarded as punishment in violation of the fifth amendment. (Metropolitan Correctional Center, New York)

1988

U.S. District Court
VISITATION

Beasley v. Wharton, 682 F.Supp. 1234 (M.D.Ga. 1988). A district court ruled that a prison regulation restricting visiting privileges to a prisoner's family or prior acquaintances was reasonable. After becoming acquainted with a woman through correspondence, an inmate serving time for child molestation, decided he wanted to marry his "pen pal." He listed her as his fiancée on his visitor's list and she requested a visit. Prison regulations limit visitation to inmates' family members and prior acquaintances and, therefore, his "pen pal" was denied a visit. The purpose of the regulation was to be sure that visitors have "legitimate personal reasons for coming to the prison, as opposed to satisfying mere curiosity interests." The court found that the regulation was reasonable, particularly since other means of communication, such as mail and the telephone, were still available. (Middle Georgia Correctional Institution, Men's Unit, Hardwick, Georgia)

State Court
VOTING

Martin v. Haggerty, 548 A.2d 371 (Pa.Cmwlt. 1988). Inmates confined in Pennsylvania correctional institutions filed a class action claiming that they have been improperly denied the right to vote while incarcerated. They complained that they were denied the use of absentee ballots, denied the right to register, and that no voting facilities were provided at correctional institutions. They also claimed that they should be transported to their regular places of residence to register and vote. The argument that these conditions violated the state constitution was rejected by the state court. Although the state constitution sets forth qualifications of voters, stating that every citizen who meets certain age and residency requirements is entitled to vote, it also empowers the legislature to enact laws regulating the registration of voters. It has chosen to bar persons confined in penal institutions from the use of absentee ballots. It is noted by the court that such provisions, at least in regards to convicted felons, have been held not to violate the U.S. Constitution. It is found that these provisions also did not violate the state constitution and that prisoners had no right to be transported to their regular polling places to register and to vote. The discussion by the court was limited to the right of convicted felons, since that was the issue addressed by the plaintiffs. (Pennsylvania Correctional Institutions)

U.S. District Court
FREEDOM OF
INFORMATION
ACT

Mendez-Suarez v. Veles, 698 F.Supp. 905 (N.D. Ga. 1988). A detainee brought a suit against a prison guard and the United States seeking damages for injuries received when attacked by another detainee. The inmate filed a supplemental complaint under the Freedom of Information Act. On cross motions for summary judgment concerning FOIA claims and with regard to liability of the prison guard, the district court found that the defendant was not entitled to attorney fees under FOIA. To substantially prevail in a Freedom of Information Act suit, as required for an award of attorney fees against the United States, the plaintiff must show that FOIA action could reasonably be regarded as necessary to obtain the information and that action had a substantial causative effect on the delivery of the information. The mere fact that the information sought was not released until after the suit was instituted is insufficient. (Federal Penitentiary, Atlanta, Georgia)

U.S. Appeals Court
CONVERSATION

Page v. DeLaune, 837 F.2d 233 (5th Cir. 1988). An instructor-counselor in a state operated ex-offender program was fired after her supervisor overheard her telling another employee that she wished to talk to a higher authority about problems with the program and DeLaune. This conversation came just days after a staff meeting at which the higher authority announced an "open door" policy and invited observations or complaints about the ex-offender program. The fired instructor sued her supervisor and others contending that she had been fired for exercising her First Amendment right of free speech. The federal appeals court found that this was clearly a personnel matter internal to the program, not a matter of public concern--and therefore fell far short of turning this into a matter of public concern covered by the First Amendment. (Texas A & M University)

U.S. Appeals Court
HAIR

Pollock v. Marshall, 845 F.2d 656 (6th Cir. 1988), cert. denied, 109 S.Ct. 239, reh'g. denied, 109 S.Ct. 545. An inmate at a maximum security facility filed a civil rights action against the prison officials after being required to cut his hair. The inmate professed a belief in Lakota American Indians who believe hair is sacred and should not be cut. The court found the inmate's religious beliefs to be sincere, but they also found prison authorities had interests which were both legitimate and reasonably related to security and sanitation in limiting the length of prisoner's hair. (Southern Ohio Correctional Facility)

U.S. District Court
MAIL

Therault v. Magnusson, 698 F.Supp. 369 (D.Me. 1988). An inmate sought a preliminary injunction prohibiting the prison from enforcing a mail regulation requiring inmates to use envelopes stamped with language that the correspondence was forwarded from prison and the prison was not responsible for the substance or content of the enclosed communication. The policy was enacted in response to complaints from merchants seeking payment for goods ordered by mail on credit, often involving unauthorized use of credit card numbers, as well as complaints of harassment and abuse through mail sent to members of the public from inmates, and the message stamped did not have a severe intrusive effect on the inmate's right to communicate freely. Adoption of the policy resulted in a substantial decrease in such complaints. The inmate claimed that the policy damaged his freedom of speech and association and that his family had requested that he not write them anymore because the envelope "lets everyone know he is in prison." He further alleged that his son was harassed by other children who saw that statements on the envelopes and thereby learned that his father was in prison. The district court found that the inmate failed to establish the likelihood of prevailing on merits of the claim that the mail regulation violated the first and fourteenth amendments, and thus, the inmate was not entitled to a preliminary injunction. (Maine State Prison)

1989

U.S. Appeals Court
TELEPHONE

Benzel v. Grammer, 869 F.2d 1105 (8th Cir. 1989), cert. denied, 110 S.Ct. 244. A prisoner has no right to unlimited telephone use. The appeals court, reversing and remanding the lower court's decision, found that a telephone policy which prevented inmates in segregated units from calling non-attorney, non-relative males, did not violate the first amendment or equal protection rights of an inmate in administrative segregation. Even though restrictions did not apply to inmates in the general population of the penitentiary, internal security and rehabilitation concerns justified the policy. The prison policy limited inmates to two calls per week, in addition to unlimited legal or religious calls. Inmates had to submit a list of three names. Inmates could not call anyone not on the list, and the list could only include two family members and one female nonfamily member. (Nebraska State Penitentiary)

U.S. Appeals Court
MAIL

Harper v. Wallingford, 877 F.2d 728 (9th Cir. 1989). An inmate brought a Section 1983 suit alleging that prison authorities had violated his first amendment rights by withholding mail. The U.S. District Court awarded summary judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's first amendment rights were not violated when mail from an organization espousing consensual sexual relationships between adult males and juvenile males was withheld from him. Factors to be considered in determining the reasonableness of a challenged prison regulation include: whether the regulation has a logical connection to legitimate government interests invoked to justify it; whether alternative means of exercising the right on which the regulation impinges remain open to prison inmates; the impact that that accommodation of an asserted right will have on guards, other inmates, and prison resources; and the absence of ready alternatives that fully accommodate the prisoner's rights at de minimis cost to valid penological interests. The mail in question was from the North American Man/Boy Love Association ("NAMBLA") and consisted of a membership application and a copy of the organization's bulletin. The prison mail room employees refused to deliver the material to the plaintiff and notified the plaintiff of their intentions. Prison officials refused to deliver the materials to the plaintiff because they felt the material threatened prison security and therefore violated the Washington State Department of Corrections Policy Directive 450.020(6)(c). The plaintiff unsuccessfully appealed the decision through the prison grievance system. (Washington State Penitentiary)

U.S. District Court
CORRESPONDENCE
PRISONER
ASSOCIATIONS
LOBBYING

Hendrix v. Evans, 715 F.Supp. 897 (N.D.Ind. 1989). State prison inmates filed a pro se complaint alleging constitutional violations in connection with their conditions of confinement. On cross motions for summary judgment, the district court found that the first amendment rights of an inmate were not violated when prison officials refused to support and fund his lobbying efforts, prohibited him from publishing leaflets to distribute to the general public and prohibited him from attending lifers' inmate organization meetings. Due process rights were not violated when a prison official refused to permit him to participate in an educational release program at a local university; and state prison inmates had no property right under Indiana law to the interest earned on their personal funds deposited in the inmate trust fund.

The prison officials were justly concerned that funding the inmate's lobbying efforts would violate Indiana law which prohibited convicted felons from serving as lobbyists, and the inmate's ability to contact legislators and other organizations was not hindered in any way by prison officials. There were alternative methods for informing the general public

about the legislative reform being considered, including individual correspondence with citizens, media representatives, or legislators, and allowing the inmate to publish leaflets to distribute to the general public would have overburdened the system for processing outgoing mail at the prison and have been fraught with security problems.

The state prison inmate was not entitled to any procedural due process protections when he was prohibited from attending meetings of the lifers' inmate organization held inside prison walls after he was voluntarily transferred to a dormitory located outside prison walls. Security reasons justified the prison policy prohibiting in-custody and out-custody inmates from associating and interacting with one another. (Indiana State Prison, Michigan City)

State Appeals Court
TELEPHONE

In re Grimes, 256 Cal.Rptr. 690 (Cal.App. 1 Dist. 1989). An inmate filed a petition for writ of habeas corpus, challenging the replacement of direct dial pay telephones in jail with collect-only telephones. The superior court entered an order requiring the installation of a free telephone line connecting the jail with the public defender's office. On review, the court of appeals, affirming the decision, found that a collect-only telephone system denied the inmates at the jail reasonable access to counsel guaranteed by the fourteenth amendment. Inmates are guaranteed a right to adequate, effective and meaningful access to courts under the fourteenth amendment, an essential component of which is the right of access to counsel. The right is possessed not only by convicted prisoners, but by pretrial detainees jailed pending trial. The collect-only telephone system denied inmates at the jail reasonable access to counsel guaranteed by the fourteenth amendment. The collect-only system unreasonably restricted communications between inmates at the jail and their attorneys and no reasonable justification for restrictions or alternative to free telephone lines were offered. Neither administrative inconvenience nor lack of resources can provide justification for deprivation of constitutional rights. The essence of the respondent's complaint is that the public defender's office and some private attorneys and other county offices refused to accept collect calls from jail inmates, thereby compromising his access to counsel and the courts. (Humboldt County Jail, California)

U.S. Appeals Court
BOOKS

Jackson v. Elrod, 881 F.2d 441 (7th Cir. 1989). A detainee in a county jail sued officials for damages resulting from the denial of his request to receive hardbound books directly from the publisher. The U.S. District Court denied the officials' motion for a summary judgment and the officials appealed. The appeals court found that an order denying the motion for a summary judgment on the grounds of qualified immunity was a final order for appeal purposes, and qualified immunity did not extend to the officials' prohibition against the detainee receiving hardcover books. The county prison officials were not entitled to qualified immunity when they barred the detainee from obtaining hardcover books which he had ordered directly from the publisher. The officer's interest in preventing the smuggling of contraband in hardcovered books and the use of such books as weapons could have been accommodated by removing hard covers before turning over the books to the detainee. (Cook County Jail, Illinois)

U.S. Appeals Court
PRISONER
ASSOCIATIONS

Taylor v. Knapp, 871 F.2d 803 (9th Cir. 1989), cert. denied, 110 S.Ct. 192. The Lifers Club, Inc., is a nonprofit, non-stock corporation formed by five prison inmates of the Nevada State Prison at Carson City, Nevada, allegedly as a service organization for fellow inmates. Taylor alleges in his complaint that various prison officials unlawfully seized and converted money and assets belonging to the Lifers Club for their own personal use. Taylor alleges that he is an officer of the corporation, but he sued as an individual plaintiff. The appeals court found that the inmate had no fourth amendment claim on his own behalf or on behalf of the nonprofit corporation he wished to represent as an officer, in connection with the allegedly unlawful seizure and conversion of corporate money and assets. (Nevada State Prison, Carson City, Nevada)

U.S. Appeals Court
CRITICISM
RETALIATION

Todaro v. Bowman, 872 F.2d 43 (3rd Cir. 1989). A pro se state prisoner brought a Section 1983 action arising out of his continued confinement in a holding cell in violation of the county prison policy. The inmate was placed in a cell in the basement of the facility, alternatively referred to as lockup, medical quarantine, drunk tank, and holding cell. In his pro se complaint, the plaintiff alleged that the warden of the county jail and another individual, without the benefit of a hearing, imposed a three-day punitive segregation upon him in retaliation for having written critical letters concerning prison conditions. The U.S. District Court adopted a magistrate's report and granted summary judgment to the defendants. On appeal, the court of appeals, reversing and remanding, found that genuine issues of material fact precluded summary judgment. Genuine issues of material fact, as to whether the state prisoner was kept from the general prison population as a punishment for letters complaining about prison conditions, precluded a summary judgment on the prisoner's pro se Section 1983 claim alleging the denial of first amendment rights. (Somerset County Jail, Pennsylvania)

U.S. Appeals Court
"PUBLISHER-ONLY"
RULE
LITERATURE

Ward v. Washtenaw County Sheriff's Dept., 881 F.2d 325 (6th Cir. 1989). A pretrial detainee brought a civil rights action challenging the sheriff's regulation limiting access to periodicals only from the publisher. On remand, the U.S. District Court upheld the rule, and the detainee appealed. The appeals court, affirming the decision, found that the sheriff had the authority to adopt the rule, and the rule did not violate the detainees' first amendment rights. The regulation was content neutral and necessary to serve a legitimate and neutral objective of the jail security. While a pretrial detainee at one jail, the prisoner purchased magazines such as "Playboy," "Penthouse," and "Oui" from the jail commissary. When he was transferred to another jail, his magazines were confiscated, and he was informed that jail policy now limited his access to publications to those received directly from the publisher. It prohibited his receipt of magazines brought by visitors, such as his brother. (Washtenaw County Jail, Michigan)

U.S. Appeals Court
REDRESS OF
GRIEVANCES

Wildberger v. Bracknell, 869 F.2d 1467 (11th Cir. 1989). A prison inmate brought action challenging a grievance proceeding and segregated confinement. The U.S. District Court granted summary judgment in favor of the defendants, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's allegation that he had been disciplined as a result of filing several grievances asserted a claim for punishment due to exercise of the first amendment right of freedom of speech and the right to petition the government for redress of grievances. He also challenged the fairness and impartiality of the disciplinary committee. (Alabama State Department of Corrections)

1990

U.S. Appeals Court
HAIR
ASSEMBLY

Benjamin v. Coughlin, 905 F.2d 571 (2nd Cir. 1990), cert. denied, 498 U.S. 951. A civil rights suit was brought against state prison officials by inmates who were members of the Rastafarian faith. The appeals court agreed with the lower court's decision that granted relief as to the regulation requiring incoming inmates to get a haircut. Although the requirement that incoming male inmates be photographed served a legitimate penological interest in providing a source of identification in the event of an escape, an alternative to the requirement that all inmates get a haircut prior to the photograph existed that served that interest and also accommodated the rights of inmates who were members of a religion that prohibited the cutting or combing of hair. The prison authorities were not successful in establishing that merely having incoming inmates pull back their hair would have a sufficient effect on the valid interest in having a photograph for identification purposes.

The court of appeals found that the regulation that permitted congregation for religious observance only under the supervision of a non-inmate spiritual leader was reasonable. In addition, the regulation that restricted the wearing of "crowns" by Rastafarian inmates did not violate those inmates' equal protection rights even though Jewish and Muslim inmates were allowed to wear their religious headgear without restriction. Crowns are much larger than other religious headgear and are capable of being used to conceal drugs, weapons, and other contraband.

According to the court, in determining whether the constitutionality of a prison rule is one of reasonableness, it must be taken into account whether a specific regulation affecting some constitutional right that is asserted by a prisoner is reasonably related to a legitimate penological interest. Factors that should be taken into consideration include whether there is a rational relationship between a regulation and the interest asserted, whether the inmates have an alternative means to exercise the right, the impact that the accommodation of the right will have on the prison system, and whether an available alternative exists that will accommodate the right and also satisfy governmental interest. (Ossining Correctional Facility, Clinton Correctional Facility, Attica Correctional Facility)

U.S. Appeals Court
NAME

Diamontiney v. Borg, 918 F.2d 793 (9th Cir. 1990). An inmate filed civil rights actions and sought a preliminary injunction to require delivery of incoming mail that used a surname other than the name under which the inmate had been committed. The U.S. District Court granted the preliminary injunction, but refused to hold the prison officials in contempt for refusing to send out the inmate's mail. Appeal and cross appeal were taken. The court of appeals found that the inmate was entitled to a preliminary injunction against prison practices that had the effect of interfering with his access to court, but the inmate failed to present clear and convincing evidence that prison officials were in civil contempt of the preliminary injunction that obligated them to deliver mail addressed to the inmate in a surname other than that under which he had been committed by refusing to deliver outgoing mail on which the inmate did not use the name under which he had been committed. The inmate did not resubmit the questioned mail, and, thus, failed to show that a violation was anything other than inadvertent. (Folsom Prison, California)

U.S. District Court
VISITORS

Doe v. Sparks, 733 F.Supp. 227 (W.D. Pa. 1990). A female inmate of a county prison brought an action challenging the prohibition on visitation by boyfriends or girlfriends of homosexual inmates. The U.S. District Court found that the rule bore a rational relation to valid goals but its effectiveness was so undercut by other factors as to render it constitutionally infirm. According to the court, if Pennsylvania law holds that it is beyond the power of the Pennsylvania legislature to prohibit adult private consensual homosexual conduct, the federal equal protection clause requires at least a showing of a rational relationship to a permissible end for any governmental policy which requires the disparate treatment for persons who are not seeking to engage in legally permissible sexual conduct but merely to acknowledge the existence of a homosexual affectional or romantic relationship. The prohibition of even consensual homosexual activity is a practical necessity of the prison administration, whether for health or discipline reasons. Concerns for abuse of inmates who are identified as homosexuals and for the protection of discipline and health were valid concerns of prison officials, and the prison policy against visits by the boyfriends or girlfriends of homosexual inmates bore a rational relation to preventing those ills, but the effectiveness of that policy to deal with those ills was so undercut by other factors as to render it constitutionally infirm. (Blair County Prison, Pennsylvania)

U.S. Appeals Court
HAIR

Dunavant v. Moore, 907 F.2d 77 (8th Cir. 1990). A prisoner brought a civil rights action claiming that a prison grooming policy violated his first amendment rights. Summary judgment for the defendants was granted by the U.S. District Court and the inmate appealed. The appeals court affirmed the decision, finding that the prison grooming policy prohibiting inmate beards longer than two inches was based on legitimate penological objectives related to security because a long beard could make identification more difficult and help the prisoners hide contraband. The rule did not violate the free exercise rights of the inmate who was a member of the Church of Jesus Christ Christian/Aryan Nation and who believed, based on religious grounds, that he should not shave, cut or round the corners of his beard. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
DUE PROCESS
REPRISAL

Frazier v. Dubois, 922 F.2d 560 (10th Cir. 1990). A prisoner brought an action alleging that he was transferred to another institution in retaliation for his activities as chairman of the "Afrikan Cultural Society" in violation of his First Amendment rights. The complaint was dismissed as frivolous by the U.S. District Court, and the inmate appealed. The court of appeals found that while a prisoner enjoys no constitutional right to remain in a particular institution and generally is not entitled to due process protections prior to a transfer, the prison officials do not have discretion to punish the inmate for exercising his First Amendment rights by transferring him to a different institution, and the prisoner's complaint was not frivolous. It was also found that, in evaluating a claim by a prison inmate that he was transferred to another institution in retaliation for exercise of his First Amendment rights, the court must determine whether a prison action is reasonably related to legitimate penological interests, which requires the weighing of the following factors: Whether there is a valid, rational connection between the prison action and the legitimate government interest put forward to justify it; whether there are alternative means of exercising the right that remains open to prison inmates; and the impact of the accommodation of the asserted constitutional right on guards and other inmates and on allocation of prison resources generally, but it is not necessary to show that the least restrictive alternative has been adopted, and substantial deference is to be accorded to the prison authorities. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
HAIR

Iron Eyes v. Henry, 907 F.2d 810 (8th Cir. 1990). A Native American inmate brought a civil rights suit seeking damages and injunctive relief against the enforcement of a prison regulation requiring all prisoners to wear their hair above their collars. The U.S. District Court dismissed the complaint with prejudice following a nonjury trial, and the inmate appealed. The appeals court found that the grooming regulation was a legitimate, neutral regulation designed to further security interests and did not unreasonably impinge on the free exercise of the Native American's religion. "This case revolves around Iron Eyes; desire to grow his hair longer than is allowed under the prison regulation. He believes that his hair is a gift from the Great Spirit, and he considers cutting his hair, except to symbolize grief for the loss of a loved one, to be an offense to the Creator. Iron Eyes has had his hair cut five times during his twenty-seven years. The first three times he cut his hair by choice, in mourning for the loss of a loved one, consistent with the Sioux religion. The last two times his hair has been forcibly cut because of a Missouri prison grooming regulation". (Farmington Correctional Center, Missouri)

U.S. District Court
MARRIAGE

Jackson v. Mowery, 743 F.Supp. 600 (N.D. Ind. 1990). A former inmate in a county jail brought a suit against the sheriff alleging the denial of his right to marry. On the sheriff's motion for summary judgment, the U.S. District Court found that the inmate's right to marry was not sufficiently established to give the sheriff notice that denial of any such request was in violation of law, and therefore, the sheriff was entitled to qualified immunity. (Grant County Jail, Indiana)

U.S. District Court
MEDIA ACCESS
NEWSPAPERS

Martin v. Rison, 741 F.Supp. 1406 (N.D. Cal. 1990). An inmate and a newspaper challenged the validity of prison regulations prohibiting the inmate from acting as a reporter for the newspaper. The U.S. District Court found that the regulations did not violate the inmate's free speech rights, and the newspaper's First Amendment rights were not affected. The administrative detention and transfer of the inmate following the publication of his newspaper article did not violate the inmate's due process or equal protection rights; the article, which contained statements regarding violence and rioting at the prison, gave rise to security concerns, including concerns over the reporting inmate's safety. According to the court, the regulations were content neutral and were rationally related to a penological interest in prison security. They did not prevent the prisoner from having contact with the media, but merely from acting as a reporter and receiving compensation. Alternatives, such as censorship of publications coming into the prison, would have imposed an excessive burden on prison staff. (U.S. Penitentiary, Lompoc, California)

U.S. District Court
PRISONER
ASSOCIATIONS

Thomas v. U.S. Secretary of Defense, 730 F.Supp. 362 (D.Kan. 1990). White inmates brought an action challenging the decisions by officials at the United States Disciplinary Barracks to reject certain incoming mail and to deny their request to form a "white ethnic club." The district court found that the regulation authorizing officials to reject incoming mail that might be disruptive did not violate the first amendment either on its face or as applied to white inmates, and the officials did not violate the inmates' rights of due process, equal protection, or association by denying their request to form an ethnic club.

The United States Disciplinary Barracks officials did not violate the white inmates' rights of due process, equal protection, or association by denying their request to form a "white ethnic club" even though the Afro-American cultural organization and Latin studies group were allowed. Evidence indicated that the latter groups provided cultural support and assisted in the inmate rehabilitation, while the barracks director of mental health opined that the request to form a white ethnic club posed a potential security threat, served no rehabilitative purpose, and was in fact an attempt to form a racist organization rather than a study group. (United States Disciplinary Barracks, Leavenworth, Kansas)

U.S. Appeals Court
CONVERSATION
MEDIA ACCESS
PRIVACY

U.S. v. Noriega, 917 F.2d 1543 (11th Cir. 1990). A television network sought relief from an order of the U.S. District Court prohibiting the broadcast of recorded conversations between a criminal defendant and his counsel. The court of appeals found that the television network's petition for mandamus to require the U.S. District Court to permit broadcast of the communications between the criminal defendant and his attorney that were intercepted by the government would be denied where the district court's required balancing of First Amendment rights with the defendant's right to a fair trial had been prevented by the network's failure to produce tapes for the court's inspection. (Metropolitan Correctional Center, Dale County, Florida)

1991

U.S. Appeals Court
MAIL

Griffin v. Lombardi, 946 F.2d 604 (8th Cir. 1991). An inmate brought a Section 1983 action against officials of the Department of Corrections, claiming that their refusal to deliver his original diploma and grade transcript violated his right to receive mail in violation of the First, Fourth, and Fourteenth Amendments. The U.S. District Court denied the officials' motion for summary judgment, and the officials appealed. The court of appeals found that genuine issues of material fact, precluding a summary judgment for the officials on qualified immunity grounds, existed as to whether they could have reasonably believed that their conduct did not violate the inmate's constitutional rights. There was evidence that numerous other inmates at the facility possessed their original diplomas and transcripts, and that several other Missouri correctional institutions allowed inmates to receive original diplomas and transcripts. (Missouri Training Center for Men, Moberly, Missouri)

U.S. District Court
CENSORSHIP
LITERATURE

Grooms v. Caldwell, 806 F.Supp. 807 (N.D. Ind. 1991). An inmate at a state prison brought an action against prison officials, alleging violation of his First Amendment rights. On the officials' motion for summary judgment, the district court found that the maximum security prison inmate did not have a First Amendment free speech right to possess documents and photographs relating to the Ku Klux Klan in his cell. (Indiana State Prison)

U.S. Appeals Court
MAIL

Harris v. Bolin, 950 F.2d 547 (8th Cir. 1991). A former inmate at a county detention center brought a civil rights action seeking damages from prison officials who opened and retained nonprivileged mail. The action was dismissed by the U.S. District Court, and the plaintiff appealed. The court of appeals found that there was no violation of the First Amendment or procedural due process. Withholding of a former prisoner's mail by

detention center officials after they determined it was obscene, and the failure to notify the former prisoner of the mail, even during the time that he was later again incarcerated at the detention center, did not rise to a level of deprivation of procedural due process. (Pope County Detention Center, Arkansas)

U.S. Appeals Court
STAFF

Harris v. Evans, 920 F.2d 864 (11th Cir. 1991). An inmate in a state prison brought a civil rights action against prison officials alleging that a policy of the state Department of Corrections that prohibited correctional employees from making parole recommendations directly to the parole board violated the First Amendment. The U.S. District Court entered an order adopting a magistrate's recommendation that the defendants' motion for summary judgment be denied, and the defendants appealed. The court of appeals found that the inmate's personal interest in having favorable recommendations made to the parole board on his behalf by correctional employees gave him a strong interest in the outcome of the civil rights action which was sufficient to outweigh prudential rationale against third-party standing. As the restricted speech involved matters of public concern, the employees' interest in commenting on such matters was required to be balanced against the government employer's interest in efficient operation and the parole board did not establish that the government interest in efficient operation outweighed the First Amendment interest of correctional employees in making recommendations regarding inmates to the board. (Georgia Department of Corrections)

U.S. District Court
PRISONER
ASSOCIATIONS

Hudson v. Thornburgh, 770 F.Supp. 1030 (W.D. Pa. 1991). Prison inmates brought an action alleging violations of their civil rights and the right to freedom of association based on prison officials' disbanding an inmate organization and on the basis of discipline they received allegedly for filing of the lawsuit. The district court found that the prison inmates in the inmate organization had no claim against prison officials for violation of their rights to freedom of association based on the officials' disbanding the organization. At the time the organization was disbanded, the officials' actions were motivated by a sincere belief that the course that the group had undertaken threatened security of the prison. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. District Court
CENSORSHIP
MAIL

Johnson v. Daniels, 769 F.Supp. 230 (E.D. Mich. 1991). An Africa-American inmate brought a Section 1983 action against an assistant warden and a mail room supervisor, claiming that black inmates, unlike white inmates, were not allowed to have nude pictures of white women. Following remand of original dismissal, the district court found that a genuine issue of material fact as to whether the mail room supervisor violated the inmate's constitutional rights by selectively enforcing prison regulations regarding erotic photographs based on racial animus precluded summary judgment; the allegation made by the inmate stated a triable claim of race discrimination. The fact that the supervisor was on the job when the alleged constitutional violation occurred did not, alone, render the inmate's action against the supervisor one against a state official in his official capacity, such that the Eleventh Amendment would bar imposition of liability under Section 1983. However, the record did not suggest that the assistant warden's alleged liability in connection with the alleged selective enforcement of the prison regulations, regarding erotic photographs based on racial animus stemmed from anything other than his supervisory role in that official capacity and, thus, he could not be held liable in his individual capacity, and neither the supervisor nor the assistant warden could be held liable under Section 1983 for official acts undertaken in their capacities as state officials. (Michigan Department of Corrections)

U.S. District Court
REDRESS OF
GRIEVANCES
RETALIATION

Richardson v. Coughlin, 763 F.Supp. 1228 (S.D.N.Y. 1991). A New York state prison inmate brought an action against state corrections officials under the federal civil rights statute, claiming they violated his due process and First Amendment rights by seizing papers, including a petition, from his cell and punishing him under prison disciplinary rules for circulating the petition without authorization. The inmate moved for partial summary judgment and the defendant officials cross-moved for summary judgment. The district court found that punishing the inmate for acquiring signatures on a petition reciting grievances violated due process, where the inmate was not on notice that acquiring signatures on such a petition was prohibited, as no prison rule prohibited acquiring signatures or circulating petitions without the express authorization of officials. Genuine issues of material fact existed as to whether part of the inmate's punishment arising from the petition was based on a reasonable belief that the petition advocated a prison strike and therefore violated a prison rule and as to what extent penalty resulted from the language of the petition and to what extent penalty impermissibly resulted from the mistaken belief that circulation of petitions without authorization was prohibited, so as to preclude summary judgment on the extent to which state corrections officials were entitled to qualified immunity from damages. It should have been obvious to the disciplinary hearing officer that punishing the inmate for circulating a petition without authorization violated a constitutional due process requirement that prior notice be given

that the conduct was prohibited before sanctions were imposed. The court also found that state corrections officials had qualified immunity as no case had been cited that at the time of the incident that the First Amendment barred prison officials from regulating circulation through a prison of a petition with the language such as that included in the inmate's petition. (Attica Correctional Facility, Sullivan Correctional Facility, New York)

U.S. District Court
NAME

Thacker v. Dixon, 784 F.Supp. 286 (E.D.N.C. 1991). An inmate, who converted to Islam and took a new name after he began serving his sentence, brought an action seeking injunctive relief and compensatory damages, alleging that his First Amendment rights were infringed by the prison's refusal to add his new name to its records, prison staff's failure to address him by his new name, and refusal of the prison to correspond with him under his new name. The U.S. District Court granted the officials' motion for summary judgment and the inmate appealed. The court of appeals affirmed in part, reversed in part and remanded. On remand, the district court found that the inmate failed to establish that he was truly sincere in his professed religious reasons for using the new name, and, thus, had no claim against prison officials for violation of the First Amendment based on the officials' failure to use the new name exclusively. Furthermore, even if the prison inmate's name change was a result of sincerely held religious beliefs, the prison officials' failure to use the new name exclusively with regard to communication with the inmate and the inmate's access to services did not violate the inmate's First Amendment rights. The administrative burden of using the new name exclusively would be intolerable, and the requirement that the inmate produce his name of commitment as an "a/k/a" to his new legal name where administratively necessary to access services did not constitute an unreasonable burden on any free exercise right the inmate might possess. (North Carolina Department of Correction)

U.S. Appeals Court
MAIL

U.S. v. Stotts, 925 F.2d 83 (4th Cir. 1991). An inmate filed a complaint alleging that prison officials were violating his constitutional rights by opening and reading his confidential legal mail. The inmate specifically challenged regulations specifying how incoming mail must be marked to qualify for confidential treatment as special or legal correspondence. The U.S. District Court declared the regulations unconstitutional as applied to the inmate, and enjoined the defendants from reading or opening mail bearing a return address of an attorney, law firm, court official or any government official, whether or not there were particular markings on the envelope. The Bureau of Prisons appealed. The court of appeals, reversing the decision, found that requirements that the legal sender be specifically identified on envelope and the requirement that confidential mail be marked as such were reasonably related to legitimate penological interests, and did not violate the inmate's constitutional right of access to the courts or his freedom of expression. (United States Bureau of Prisons, North Carolina)

1992

U.S. Appeals Court
TELEPHONE

Aswegan v. Henry, 981 F.2d 313 (8th Cir. 1992). State prisoners sought preliminary and permanent injunctive relief contending that a prison policy prohibiting prisoners from making toll-free telephone calls even to their attorneys denied them access to courts. The U.S. District Court granted the injunction, and the prison appealed. The court of appeals, vacating and remanding, found that the prisoners were not entitled to enjoin prisons from enforcing the regulation prohibiting prisoners from making the toll-free telephone calls where the prisoners showed neither irreparable harm nor prejudice from the policy. Although prisoners have a constitutional right to meaningful access to courts, prisoners do not have a right to any particular means of access, including unlimited telephone use. The prison need only provide access to courts that is adequate, effective, and meaningful when viewed as a whole. The court noted that general population prisoners may make an unlimited number of collect telephone calls to their attorneys, and segregation prisoners may make two collect telephone calls per week. The prison has special telephones for prisoners' collect calls, and each call is limited to ten minutes. The prison allows unlimited correspondence and personal visits between prisoners and their attorneys. Prisoners also have access to a law library and may seek assistance from other prisoners through the jailhouse lawyer system. (Iowa State Penitentiary)

U.S. Appeals Court
CORRESPONDENCE

Farrell v. Peters, 951 F.2d 862 (7th Cir. 1992). An Illinois state prisoner brought a civil rights suit against prison officials who forbade him to correspond with his alleged "common-law" wife, who was an inmate of another Illinois prison. The U.S. District Court entered judgment against the prisoner, and he appealed. The court of appeals found that the prisoner's First Amendment rights were not violated by a Illinois Department of Corrections rule providing that permission for committed persons to correspond between intrastate and interstate correctional facilities required approval of chief administrative officers of both facilities based on safety and security concerns. Forbidding the prisoners to correspond did not violate any "right to marry," where the prisoners had not been validly married under Illinois law and Illinois did not recognize common-law marriage. There was no suggestion that the two might have formed a common law marriage in a state that recognizes such marriage, which would be valid in Illinois. (Illinois Department of Corrections)

U.S. District Court
STAFF

Heideman v. Wirsing, 840 F.Supp. 1285 (W.D.Wis. 1992). A former deputy sheriff brought a civil rights action against a sheriff and county arising from his termination, alleging that he was fired in violation of his First Amendment right to express his political views, and alleging claims under Wisconsin law. The defendants moved for summary judgment and a dismissal of the claims. The district court found that the deputy sheriff did not have a Section 1983 First Amendment claim against the sheriff. However, a fact issue as to whether the deputy sheriff had a right under the employment agreement not to be fired for his political views so as to give him a property interest in his employment precluded summary judgment for the county on the due process claim. The former deputy sheriff also stated a cause of action under Wisconsin law against the county for breach of contract arising from the termination of his employment. The deputy sheriff alleged that he had a right under the employment agreement not to be fired for his political views. (Prince County, Wisconsin)

U.S. District Court
MEDIA ACCESS

Mujahid v. Sumner, 807 F.Supp. 1505 (D. Hawaii 1992), affirmed, 996 F.2d 1226. An inmate of a Hawaiian prison filed a suit under Section 1983 against prison officials alleging that an administrative rule restricting personal correspondence between inmates and members of the news media was unconstitutional. The district court found that the rule was facially unconstitutional. Although prison security might be compromised by allowing inmates to become media news sources, the regulations acted to categorically prohibit a class of communications, many of which the prison had no legitimate penological interest in prohibiting. However, the fact that other inmates had been allowed to write to the editor of the local newspaper did not render the rule restricting personal correspondence between the inmates and members of the news media in violation of the equal protection clause, where the inmate failed to show any evidence that other inmates were allowed to engage in specific correspondence restricted by the regulation. In addition, state prison officials were entitled to qualified immunity in the inmate's suit against them in their individual capacities because they did not violate clearly established rights of the inmate by enforcing the rule since the unconstitutionality of the rule was not plainly apparent. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
REDRESS OF
GRIEVANCES

Wolfel v. Morris, 972 F.2d 712 (6th Cir. 1992). Prison inmates sued prison officials and the prison for an alleged civil rights violation based on imposition of discipline for circulation of a petition aimed at redressing grievances against prison conditions. The U.S. District Court found that prison regulations were unconstitutionally vague as applied, ordered expungement of the discipline, but found that the plaintiffs were not entitled to monetary damages, and appeals were taken. The court of appeals found that the prison regulation allowing punishment of the inmates for circulating the petition was unconstitutional where applied without adequate warning. However, the court noted that the prisoners were not entitled to an injunction to prevent prison officials from using the regulations to punish circulation of petitions in the future. The regulation would not be impermissibly vague if sufficient notice were given to prisoners that the regulations would be enforced. (Southern Ohio Correctional Facility)

1993

U.S. District Court
VOTING

Baker v. Cuomo, 842 F.Supp. 718 (S.D.N.Y. 1993), reversed 58 F.3d 814. Inmates brought a civil rights action alleging that a New York statute unconstitutionally deprived them of their right to vote. The district court found that the statute prohibiting incarcerated felons from voting in federal, state and local elections did not unconstitutionally deprive prisoners of the right to vote and did not violate the Voting Rights Act. In addition, the statute did not amount to taxation without representation. The appeals court reversed, finding that the inmates stated a claim under the Voting Rights Act. (Green Haven Correctional Facility, New York)

U.S. District Court
TELEPHONE

Griffin-El v. MCI Telecommunications Corp., 835 F.Supp. 1114 (E.D.Mo. 1993). An inmate brought a Section 1983 suit against the state and a telephone services contractor. Adopting the report and recommendation of a U.S. Magistrate Judge, the district court found that the prison and telephone services contractor were not liable to the inmate under Section 1983 for a policy requiring the provider to identify calls as collect calls from a correctional institution, absent a showing that any constitutional right had been impinged by the practice. The fact of an inmate's incarceration is a matter of public record, and thus the practice implicated no constitutional privacy interest. Even if some constitutional privacy interest was implicated, the practice served reasonable penological interests. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
COMMUNICATIONS
WITH PRISONERS
MAIL

Hall v. Singletary, 999 F.2d 1537 (11th Cir. 1993). A prisoner brought an action against Florida prison authorities alleging they violated his constitutional rights under the First Amendment by applying Florida Department of Correction mail regulations to preclude him from sending a letter to an inmate at another Florida prison. The U.S. District Court entered summary judgment for the prison authorities and the prisoner appealed. The appeals court, affirming the decision, found that the defendants have a legitimate security

concern in restricting correspondence between inmates. However, it was noted that the inmate may request the state court to order that he be permitted to communicate with the other inmate. The defendants indicated that such correspondence would be permitted upon entry of an order by the state court. (Central Florida Reception Center, Orlando, Florida)

U.S. District Court
MARRIAGE

Hanselman v. Fiedler, 822 F.Supp. 1342 (E.D. Wis. 1993). Inmates challenged Wisconsin correctional regulations requiring prisoners who wished to marry nonprisoners to take part in six premarital counseling sessions. The district court found that the regulations bore a rational relationship to legitimate penological interests and, thus, did not violate the prisoners' due process rights. The regulations were designed to protect nonprisoners from victimization or exploitation and to contribute to prisoner rehabilitation. In addition, they provided an alternative to counseling by a prison chaplain. Permitting marriage on demand would severely burden prison resources, and there was no obvious alternative that would effectively protect the public interest. (Dodge Correctional Institution, Oshkosh Correctional Institution, Wisconsin)

U.S. Appeals Court
PRETRIAL
DETAINEES
PUBLICATIONS

Hause v. Vaught, 993 F.2d 1079 (4th Cir. 1993), cert. denied, 114 S.Ct. 702. A former pretrial detainee brought a civil rights action challenging his conditions of confinement. The U.S. District Court granted summary judgment in favor of the defendant jail officials, and the detainee appealed. The appeals court found that restrictions on receiving outside publications did not violate the detainee's First Amendment rights. Limitations placed on the short-term detainee's constitutional rights when the detainee was prevented from receiving outside publications while confined were reasonably related to penological interests in the prevention of smuggling and of preventing fires. (Horry County Detention Center, Conway, South Carolina)

U.S. District Court
MEDIA ACCESS

Johnson v. Stephan, 816 F.Supp. 677 (D. Kan. 1993), affirmed, 6 F.3d 691. A state prisoner brought a civil rights action against prison officials. The court found that the prisoner did not state a constitutional claim arising from a prison warden's refusal to allow a television program the opportunity to interview him in person for an on-camera interview, on the basis of the officials' belief that the interview would disrupt facility operation. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
NAME

Kirwan v. Larned Mental Health, 816 F.Supp. 672 (D.Kan. 1993). An inmate brought a Section 1983 action against prison officials, alleging that the officials had slandered the inmate. The district court found that the inmate failed to state an actionable Section 1983 claim based on the prison officials' use of the inmate's former legal name, under which he was convicted and sentenced, rather than his new name, which had been legally changed during his incarceration, as the officials were following applicable prison regulations. The inmate changed his name for personal reasons, and he set forth no First Amendment claim regarding the exercise of his religious beliefs or his rights of association. (Larned Mental Health Correctional Facility, Larned, Kansas)

U.S. Appeals Court
HAIR

Quinn v. Nix, 983 F.2d 115 (8th Cir. 1993). Inmates with shag haircuts sued prison officials for civil rights violations arising out of an order directing the inmates to cut their hair. The U.S. District Court entered judgment for the inmates, and the prison officials appealed. The appeals court, affirming the decision, found that the prison officials violated the inmate's civil rights by ordering them to cut their hair. Although the officials had a legitimate penological interest in curbing gang activity, the district court's determination that the proffered explanation that the hairstyle at issue was gang-related was pretextual was not clearly erroneous, where officials never told the inmates why their hairstyle was considered extreme and officials did not receive a memo depicting gang-related hairstyles until after they ordered the inmates to get haircuts. In addition, the prison officials were not entitled to qualified immunity for violating the prisoners' civil rights, where the district court found that the officials did not act out of legitimate penological concerns. (Iowa State Penitentiary)

U.S. Appeals Court
INSPECTION OF
MAIL

Smith v. Delo, 995 F.2d 827 (8th Cir. 1993), cert. denied, 114 S.Ct. 710. An inmate in a state correctional system filed a suit alleging that a regulation requiring outgoing mail to members of the media or clergy to be sent to the prison mailroom unsealed for inspection violated his First Amendment rights. The U.S. District Court granted the prison officials' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the prison regulation requiring the inspection of outgoing mail for contraband and proper addressing was reasonably related to the legitimate purpose of screening mail for escape plans, contraband, threats, or evidence of illegal activity. It did not prohibit inmates from communicating permissible messages, and there was no less restrictive manner by which officials could vindicate their interests. (Potosi Correctional Center, Missouri)

U.S. District Court
CROSS-DRESSING
MAKEUP

Star v. Gramley, 815 F.Supp. 276 (C.D.Ill. 1993). A prisoner brought a Section 1983 action against a warden to challenge the refusal to allow him to wear women's makeup and apparel. The warden moved for summary judgment. The district court found that prohibiting cross-dressing and wearing of female makeup did not violate the First Amendment or equal protection clause. Legitimate penological and security concerns overrode any First Amendment right of the prisoner to freedom of expression by cross-dressing as a female and wearing female makeup. The warden asserted that allowing the inmate to wear women's garments and makeup could promote homosexual activity or assault. In addition, a potentially drastic change in identity could facilitate escape. Also, providing female clothing and makeup at the commissary would make little fiscal sense. Prohibiting the male prisoner from wearing a dress treated him the same as similarly situated male inmates and, therefore, did not violate the equal protection clause. Although women inmates are allowed to wear pants, different treatment between men and women cannot sensibly be compared. (Pontiac Correctional Center, Illinois)

U.S. District Court
PRIVACY
TELEPHONE

Tucker v. Randall, 840 F.Supp. 1237 (N.D.Ill. 1993). A former pretrial detainee brought a Section 1983 action against officers of a sheriff's department, alleging inadequate access to the telephone and illegal taping of phone conversation. The district court dismissed, and the detainee appealed. The appeals court found that officers did not violate clearly established law in 1986, when they allegedly denied the detainee access to a telephone for the first 67 hours of his incarceration. The alleged secret taping of the pretrial detainee's telephone calls did not substantially affect his right to confer with counsel and, therefore, was not a "clearly established" constitutional violation in 1986. The detainee's counsel met with the detainee in person rather than by using the phone, and the counsel could not recall any complaints by the detainee that the meetings were less convenient than using the phone. (Kendall County Jail, Illinois)

U.S. District Court
CENSORSHIP
NEWSPAPERS

Yoder v. Oestreich, 820 F.Supp. 405 (W.D. Wis. 1993). Inmates brought an action against corrections officials, alleging violation of their First Amendment rights concerning removal of an article from their newspapers. The court found that the inmate's First Amendment rights were not violated by the removal from their newspapers of an article predicting the death of a correctional officer at the hands of a prisoner; the article advocated violence against an officer, creating a risk of disorder and undermining the safety and security of staff and inmates. (Waupun Correctional Institution, Waupun, Wisconsin)

1994

U.S. District Court
"PUBLISHER-ONLY"
RULE
RELIGIOUS
LITERATURE

Blackmon v. Essary, 850 F.Supp. 814 (E.D.Mo. 1994). A state inmate filed a Section 1983 action against a prison chaplain alleging that the chaplain violated the First and Fourteenth Amendments by first denying a request by the inmate to receive by direct mail religious cassette tapes from church and then by delaying delivery of the tapes to the inmate for 40 days after their receipt by the chaplain. On the chaplain's motion for summary judgment the district court found that the prison policy allowing individual inmates to receive cassette tapes by direct mail only from commercial vendors or well-established religious ministries was constitutional. In addition, a 40-day delay in delivering the tapes to the inmate after their receipt by the chaplain was not the result of discrimination, retaliation or done with the intent to violate freedom of religion. The chaplain testified that after he received the tapes he attempted to contact the religious organization which sent them several times and then examined the tapes to ascertain whether it would be appropriate for the inmate to receive them. (Missouri)

U.S. District Court
CENSORSHIP
LANGUAGE

Frink v. Arnold, 842 F.Supp. 1184 (S.D.Iowa 1994) affirmed 43 F.3d 673. An inmate enrolled in a sexual offender treatment program filed a Section 1983 action alleging that prison officials violated his First Amendment rights by seizing his fictional writings and requiring him to send them out of prison. The district court found that prohibiting the inmate from keeping his written prose which contained sexually explicit material did not violate his First Amendment rights. (Mount Pleasant Correctional Facility, Mount Pleasant, Iowa)

U.S. Appeals Court
MAIL
PRIVACY

Gassler v. Wood, 14 F.3d 406 (8th Cir. 1994). Inmates brought a Section 1983 action alleging that prison authorities violated their First and Fourteenth Amendment rights by providing a third party with photocopies of their nonlegal mail. The U.S. District Court awarded summary judgment in the defendants' favor, and the inmates appealed. The appeals court found that the authorities did not violate the inmates' First Amendment free speech rights by providing an investigator with photocopies of their outgoing nonlegal mail. Authorities have a right to examine outgoing nonlegal mail. Even if letting an investigator see correspondence was a separate and greater intrusion upon the First Amendment rights, it was justified by legitimate governmental interest to see if the mail revealed plans to intimidate or murder witnesses in an upcoming trial. (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. Appeals Court
PRISONER
ASSOCIATION
RETALIATION

Hazen v. Reagen, 16 F.3d 921 (8th Cir. 1994). An inmate at the Iowa State Penitentiary (ISP) who was nominated to serve on an elected inmate advisory council at ISP, and whom prison officials subsequently transferred to a Florida prison, moved for an order to show cause why prison officials should not be held in contempt of a consent decree pursuant to which the council was created. The inmate alleged that the transfer was intended to frustrate his nomination to the council. The U.S. District Court denied the motion, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's transfer did not violate the consent decree. The Prisoners' Advisory Council (PAC) bylaws did not prohibit the legitimate transfer of the inmate to another institution, even if he had been selected as a PAC representative. In addition, the inmate's First Amendment rights were not violated, where the reason for the transfer was not because the inmate sought redress of grievances, but because of the authorities' reasonable belief of the inmate's troublesome, manipulative character. (Iowa State Penitentiary)

U.S. District Court
PUBLICATIONS

Hodges v. Com. of Virginia, 871 F.Supp. 873 (W.D.Va. 1994). Prison inmates and a publisher of a sexually explicit magazine brought an action against prison officials, alleging that a prison policy which restricted inmate access to such publications infringed upon First Amendment rights. The district court found that the prison did not violate the procedural due process rights of the publisher when it failed to notify the publisher that the delivery of the magazine to the inmates had been denied. The publisher's interest in communicating with inmates was attenuated since the magazine was aimed at a general audience and the inmates could have the magazines sent to other persons. The interest of the publisher was protected when the inmates were notified and allowed to challenge the denial; requiring the prison to notify the publisher each time it denied access to a publication would be an onerous burden. (Keene Mountain Correctional Center, Virginia)

U.S. District Court
RETALIATION
STAFF

Hughes v. Bedsole, 913 F.Supp. 420 (E.D.N.C. 1994). A former shift supervisor at a county jail filed suit against the county sheriff's department and others following her termination, alleging sex discrimination, violation of her free speech rights, and other claims. The court ruled that the plaintiff's termination was not in retaliation for her exercise of free speech that occurred when she allegedly complained to the county chaplain and sheriff about understaffing at the jail. The court found that her complaints did not involve matters of public concern, but rather that she was "simply grouching" about the conditions of her own employment. The plaintiff alleged a male staff member was not terminated for a similar incident (allowing jail doors to be unlocked); the court found that evidence failed to establish with certainty that the male employee was responsible for the unlocked doors, and that an equal protection violation did not occur. The court found that the sheriff's failure to demote the shift supervisor to road patrol, rather than terminating her, did not constitute handicap discrimination in violation of the Federal Vocational Rehabilitation Act because the employee alleged she was capable of performing both duties. The court also found the supervisor did not have a property interest in her job sufficient to support a due process claim, and that the supervisor was not subjected to sex discrimination. (Cumberland County, North Carolina)

U.S. Appeals Court
LANGUAGE
MAIL

Kikumura v. Turner, 28 F.3d 592 (7th Cir. 1994). A prisoner brought a Bivens action against federal prison officials challenging their policy of refusing to allow him any Japanese-language mail. The U.S. District Court entered summary judgment for the prison and appeal was taken. The appeals court found that prison officials had qualified immunity from the damage suit, as the right to have materials in Japanese language was not a clearly established constitutional right at the time in question. The court also found that the prisoner's claim that he was wrongfully denied an opportunity to receive materials in the Japanese language was not rendered moot by the prison warden's adoption of a new policy under which efforts would be made to find a Japanese translator who could screen the materials. As the warden had rejected an earlier draft of the policy change, requiring the prison to take specific actions to find a translator, it could not be said the problem would not recur. In addition, fact issues existed as to whether an outright ban on the receipt of materials violated the prisoner's constitutional rights. Evidence showed that the prison had failed to make any case-by-case determination as to the suitability of particular items. There was also a question of whether the prisoner had enough fluency in the English language so as to be able to receive information that way. Furthermore, the cost to the government of checking to see if anyone within the Bureau of Prisons had expertise to translate Japanese materials was not high. (United States Penitentiary, Marion, Illinois)

U.S. Appeals Court
STAFF

Kolman v. Sheahan, 31 F.3d 429 (7th Cir. 1994). Employees of a county sheriff's department brought an action against the sheriff, alleging they were demoted or terminated because of their political affiliation. The U.S. District Court granted the sheriff's motion to dismiss and for summary judgment, and the employees appealed. The appeals court found that the allegations of the sheriff's department employees that they were terminated or demoted from positions in the department's electronic monitoring unit when the sheriff who belonged to a different political party was elected, were sufficient to state a First Amendment political patronage claim. However, a state statute prohibiting termination or demotion of deputy sheriffs without a hearing before the county merit board did not apply to the employees. (Cook County Sheriff's Department, Illinois)

U.S. District Court
STAFF

Lawrenz v. James, 852 F.Supp. 986 (M.D.Fla. 1994), affirmed, 46 F.3d 70. A discharged correctional officer brought a civil rights action against a superintendent of a correctional facility and the Secretary of the State Department of Corrections for violating his First Amendment rights of free speech and association. On the defendants' motion for summary judgment, the district court found that the superintendent of the correctional facility was entitled to qualified immunity for his decision to terminate the probationary correctional officer for wearing a "White Power" t-shirt with a swastika and firing a rifle in the air at an outdoor barbecue on Martin Luther King Day. The superintendent was acting within the scope of his discretionary authority when he made the decision to terminate the officer, and there was no clearly established law that the superintendent violated in terminating the officer. In addition, the correctional officer's wearing of the t-shirt and discussing with his peers his perception of racial discrimination at the correctional facility were not matters of public concern, entitled to First Amendment protection. His beliefs relating to the swastika and the strength of white people were purely matters of personal interest, and his speech was never publicly aired. The incident received media attention only after the officer was arrested for firing the rifle. The court also found that the superintendent's interest in the effective operation of the correctional facility superseded the officer's First Amendment interests. (Charlotte Correction Institution, Florida)

U.S. District Court
RELIGIOUS
LITERATURE
PUBLICATIONS

Lawson v. Dugger, 844 F.Supp. 1538 (S.D. Fla. 1994); appealed, 897 F.2d 536. Inmates brought a class action suit challenging the refusal of prison officials to allow inmates professing adherence to the Hebrew Israelite faith to receive religious literature of that faith. The U.S. District Court found that a prison rule governing the procedures to inform an inmate of the denial of an incoming publication addressed to him or her satisfied minimal due process requirements. The rule required written notification to an inmate of a rejection of mail. It provided that a publisher or sender could submit written comments for review, and provided that the inmate could appeal to the office of the Secretary. In addition, the publisher or sender could obtain an independent review of the superintendent's decision by writing to the library services administrator. (Florida Department of Corrections)

U.S. District Court
RETALIATION

Lowrance v. Coughlin, 862 F.Supp. 1090 (S.D.N.Y. 1994). A Muslim prisoner brought a Section 1983 action against various prison officials alleging violation of the First, Eighth, and Fourteenth Amendments. The district court found that evidence showed that repeated transfers of the inmate from prison to prison, searches of his cell, and his placement in segregative confinement were in retaliation for his exercise of First Amendment free speech and religion rights. (Green Haven Correctional Facility, and other facilities, New York)

U.S. Appeals Court
MAIL
NAME

Malik v. Brown, 16 F.3d 330 (9th Cir. 1994). An inmate brought a civil rights action alleging that prison officials violated his statutory and constitutional rights by refusing to process mail and documents in which he used his religious name. The U.S. District Court granted summary judgment in favor of the officials and the inmate appealed. The appeals court, reversing and remanding, found that a ten-year gap between the time when the inmate legally changed his name to an Islamic name and when he began to use it exclusively did not attenuate his free exercise claim. Prison regulations requiring the inmate to use his committed name, rather than his religious name, on correspondence, legal documents, and in daily affairs impinged on his First Amendment rights. Genuine issues of material fact existed as to whether the prison officials violated the inmate's right to use both his religious and committed names on correspondence and whether they improperly disciplined him, precluding summary judgment. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
NAME

Matthews v. Morales, 23 F.3d 118 (5th Cir. 1994). An inmate who was a convicted felon brought an action against the Attorney General alleging that a statute prohibiting him from changing his name violated his free exercise of Muslim religion. The U.S. District Court granted the Attorney General's motion to dismiss and the inmate appealed. The court of appeals, affirming the decision, found that the Texas statute had a logical connection to a legitimate governmental interest, and thus did not violate the inmate's free exercise of Muslim religion. The statute was intended to protect the ability to identify persons sought on warrants and detainees and to preserve the criminal history of felons. (Texas State Penitentiary)

U.S. District Court
FAMILY
VISITS

Navin v. Iowa Dept. of Corrections, 843 F.Supp. 500 (N.D. Iowa 1994). Action was brought against a sheriff and jail administrator for alleged violation of an inmate's constitutional rights by restricting visitation by the inmate's minor daughter. On the defendants' motion for summary judgment, the district court found that the inmate did not have standing to assert denial of his daughter's constitutional right of visitation. The correctional center's requirement that minors be accompanied by an appropriate adult was reasonably related to legitimate penological interests even if it impinged upon the inmate's First, Eighth and Fourteenth Amendment rights. The defendants were entitled to qualified immunity where a reasonable official would not have known that the alleged actions violated constitutional rights. (Linn County Correctional Center, Iowa)

U.S. District Court
REDRESS OF
GRIEVANCES

O'Keefe v. Murphy, 860 F.Supp. 748 (E.D. Wash. 1994), reversed 82 F.3d 301 An inmate brought a Section 1983 action against penitentiary administrators, seeking to enjoin them from treating certain of his mail as regular mail that could be opened and read rather than as legal mail. The defendants moved for summary judgment. The district court found that the policy permitting prison officials to read prisoners' grievances to government agencies or officials violates the prisoners' First Amendment right to petition the government for redress of grievances. However, grievance mail may be opened and inspected in a prisoner's presence. Upon the government's motion for reconsideration and the inmate's motion for sanctions, the court found that the requirement that inmates' correspondents label incoming mail as grievance mail was unconstitutional. On appeal, the appeals court reversed, finding that the practice of refusing to treat grievances as legal mail did not violate the First Amendment. (Washington State Penitentiary)

U.S. Appeals Court
FAMILY

Thomas v. Farley, 31 F.3d 557 (7th Cir. 1994). A state prison inmate filed a civil rights complaint alleging infliction of cruel and unusual punishment by refusing to permit him to attend his mother's funeral. The suit was dismissed by the U.S. District Court and the inmate appealed. The appeals court, affirming the decision, found that allegations that the prisoner was not allowed to go to the funeral because a secretary had inadvertently left the authorization sitting on her desk were charges of negligence and were not actionable in a civil rights suit, even though the complaint characterized the defendants' motivation as deliberate indifference. (Indiana State Prison)

U.S. District Court
MEDIA ACCESS

Thompson v. Clarke, 848 F.Supp. 1452 (D.Neb. 1994). Prisoners sued prison officials, alleging that their constitutional rights were violated by the officials' refusal to allow them to use prison facilities for the production of taped programs for broadcast on a public-access television channel for the purpose of promoting a particular religious belief. On the officials' motion for summary judgment, the district court found that the officials were entitled to qualified immunity respecting the claim. The law was not clear enough that a reasonable official would have understood the refusal to be a violation of constitutional rights. (Nebraska State Penitentiary)

U.S. Appeals Court
CORRESPONDENCE
LANGUAGE

Thongvanh v. Thalacker, 17 F.3d 256 (8th Cir. 1994). An inmate brought a Section 1983 action alleging constitutional violations in connection with a requirement that his incoming and outgoing correspondence be in English, except for correspondence with his parents and grandparents. Following a jury verdict in the amount of \$4,000 for the inmate, the U.S. District Court entered a judgment for \$2,000. On appeal, the court found that there was no fundamental miscarriage of justice in the district court's denial of the prison officials' motion for a new trial. Also, the record did not explain the district court's reduction of the damage award to the inmate from \$4,000 to \$2,000, and, thus, the jury award of \$4,000 would be restored. (Iowa Men's Reformatory)

U.S. District Court
CONVERSATION
PRIVACY
TELEPHONE

U.S. v. Green, 842 F.Supp. 68 (W.D.N.Y. 1994). An inmate and persons with which he had conversed by telephone moved to suppress all evidence of telephone conversations conducted while the inmate was incarcerated in a state prison, as well as any other evidence gathered as a result of the information obtained from those conversations. The district court found that federal law controlled the question of whether tape-recorded interception of telephone conversations at a New York state prison could be used as evidence in federal court. The court also found that implied consent existed to record the inmate's telephone conversations for use in criminal prosecutions, even though the inmate was never told that use of the telephone system constituted consent to be recorded or that the prison could use the tapes as incriminating evidence, and even though he thought he was being monitored but not recorded. The inmate was informed that the prison system had the ability to monitor telephone calls, and on several occasions the inmate either warned parties he called of monitoring or used code to talk about alleged criminal activity during telephone conversations. Given the prison's strong interest in preserving security, the interception of the calls from the inmate to noninmates did not violate the rights of the noninmates. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
TELEPHONE

Washington v. Reno, 35 F.3d 1093 (6th Cir. 1994). Federal prison inmates filed an action challenging the replacement of a federal prison collect-call telephone system with a direct dial system. The U.S. District Court issued a preliminary injunction forbidding the government from proceeding with the installation of the new system. Following amendment of the telephone regulations the government appealed. The appeals court found that the replacement of the collect-call system with a direct-call system in which inmates were allowed to list 30 phone numbers on call lists did not violate the inmates' or call recipients' First Amendment rights. (Federal Medical Center, Lexington, Kentucky)

U.S. Appeals Court
REDRESS OF
GRIEVANCES
RETALIATION
STAFF

Zorzi v. County of Putnam, 30 F.3d 885 (7th Cir. 1994). A former dispatcher in a sheriff's office sued a county and a former and current sheriff, alleging that her termination and refusal to rehire her violated her rights of political association and due process, and her right to seek redress in courts. The U.S. District Court denied the former sheriff's and county's motions for summary judgment based on qualified immunity, and entered a preliminary injunction ordering the dispatcher reinstated. The defendants appealed. The appeals court found that the dispatcher's lawsuit, alleging that the sheriff fired her for her

political support of the state's attorney involved matters of public concern, as required to warrant First Amendment protection against retaliation by a public employer, and as required for a preliminary injunction ordering the dispatcher's reinstatement when the county refused to rehire her because of the pending lawsuit. Political speech, the fact that a public employer would fire an employee for political speech or support of a candidate, and the sheriff's underlying dispute with the state's attorney, were all matters of public concern. (Putnam County Sheriff's Department, Illinois)

1995

U.S. Appeals Court
MAIL
PUBLICATIONS
REGULATIONS-
CENSORSHIP

Allen v. Coughlin, 64 F.3d 77 (2nd Cir. 1995). An inmate filed a civil rights action against prison authorities alleging violation of his constitutional rights by the removal of newspaper clippings from his incoming mail. The district court granted summary judgment and dismissed the case, and the appeals court affirmed in part and reversed in part. The appeals court agreed that the prison officials were entitled to qualified immunity, but also held that fact questions precluded summary judgment regarding the validity of the prison policy which prohibits inmates from receiving newspaper clippings through the mail. The policy considers clippings as contraband and authorizes their removal from mail. The appeals court reviewed the clippings that were removed and found them to be "entirely innocuous." The appeals court remanded the case to determine if the prison policy violated the inmate's rights to due process and equal protection. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
LANGUAGE
INSPECTION OF MAIL
MAIL

Bieregu v. Reno, 59 F.3d 1445 (3rd Cir. 1995). An inmate brought an action against prison officials alleging violation of his constitutional rights by repeatedly opening his properly marked incoming legal mail outside of his presence. The district court entered summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that the prison's pattern and practice of opening court mail outside his presence impinges on his constitutional rights to free speech and court access, and that no showing of an actual injury is necessary to establish that his rights have been infringed. The court noted that a single, inadvertent opening of properly marked legal mail outside the prisoner's presence would not infringe on the prisoner's rights absent a showing of actual injury. The court found that the officials were not entitled to qualified immunity. The court also held that prison officials violate an inmate's First Amendment rights when they refuse to deliver incoming personal mail simply because it is written in a language other than English, or when they refuse to deliver mail that allegedly could be emotionally disturbing to an inmate absent a psychiatric determination that the mail would indeed be upsetting. (Federal Correctional Institution, Fairton, New Jersey)

U.S. Appeals Court
CRITICISM
REDRESS OF
GRIEVANCES

Bradley v. Hall, 64 F.3d 1276 (9th Cir. 1995). A state prisoner filed a § 1983 action against the director of the Oregon Department of Corrections challenging the constitutional validity of prison regulations which prohibit the use of disrespectful language in a grievance. The district court found the regulations to be facially unconstitutional and the appeals court agreed. The appeals court held that prison officials may not punish a prisoner for using hostile, sexual, abusive or threatening language in a written grievance. The court noted that punishing a prisoner for the contents of a grievance burdens a prisoner's ability to file grievances and impacts his constitutionally protected rights under the Fourteenth and First Amendments. The court found that the line between an honest and unabashed airing of a grievance and the prohibited language was hazy and left a prisoner guessing as to whether he would be punished for his complaint. (Oregon Department of Corrections)

U.S. District Court
REDRESS OF
GRIEVANCES

Brown v. Carpenter, 889 F.Supp. 1028 (W.D.Tenn. 1995). A state inmate brought a § 1983 action against prison officials alleging that his due process rights were violated, that he was the victim of retaliation, and that he had a right to investigate the activities of prison staff. The district court dismissed the complaint, ruling that the inmate had no right protecting him from being charged with a disciplinary offense, and that some evidence supported the prison disciplinary board's decision that the inmate had committed the offense of disrespect. The prisoner had refused to abide by prison procedures and had announced his intention to abuse the prison grievance procedure by acting as a focal point for complaints about the administration. The court noted that the First Amendment right of access to courts does not guarantee any constitutional right to provide legal assistance to other inmates or to act in any representative capacity as an ombudsman, general advocate, or agitator. The court also held that reasonable limitations on the use of the prison grievance system and rules that require inmates to display respect for staff members in the use of that system are clearly related to the core function of maintaining security. (West Tennessee High Security Facility)

U.S. District Court
FAMILY

Cook v. Boyd, 881 F.Supp. 171 (E.D. Pa. 1995). An inmate and his wife brought a civil rights action against a prison counselor who refused to allow the inmate to participate by telephone in his child's custody hearing. On cross-motions for summary judgment, the district court found that the wife's civil rights claim was frivolous and was properly dismissed. The wife failed to identify any right, privilege, or immunity secured by the Constitution of the United States to have her husband present at the hearing involving

the custody of her stepdaughter. In addition, the denial of the prison official of the inmate's telephone access to his daughter's custody hearing did not rise to the level of deprivation proscribed by the Eighth Amendment. The inmate's counsel represented him at the hearing, any mental anguish suffered by the inmate worrying about the custody situation lasted only one day, and the inmate and his wife ultimately won custody of his daughter. The court also found that when the prison official prevented the inmate from participating by telephone in his daughter's custody hearing, the inmate was not denied any constitutional right to maintain his parental relationship with his daughter where the inmate was aptly represented by counsel at the hearing, the inmate was not prohibited from offering testimony through a videotape or other recorded form, and the inmate was not denied the ability to cross-examine through his counsel any witnesses testifying against his interests. (Graterford Prison, Pennsylvania)

U.S. District Court
MAIL
INDIGENT
PRISONERS

Dawes v. Carpenter, 899 F.Supp. 892 (N.D.N.Y. 1995). A prison inmate filed a civil rights action. The district court dismissed the case, finding that the prison's restriction on free postage did not violate the inmate's rights. The inmate had alleged that the prison's elimination of a postage subsidy for non-legal mail violated the First Amendment. The court found that the new policy did not overly restrict most prisoners' ability to conduct nonprivileged communication with people outside prisons, where the inmates could receive incoming mail and visitors, make collect phone calls, and purchase stamps with money earned while in prison. (Great Meadow Correctional Facility, New York).

U.S. District Court
MAIL
NAME

Fawaad v. Herring, 874 F.Supp. 350 (N.D. Ala. 1995). An inmate brought a Section 1983 action claiming that prison officials violated his right to freely practice his chosen religion by requiring him to use the name under which he was convicted and committed as well as his chosen religious name on both his outgoing and incoming mail. The district court found that the requirement did not violate the inmate's rights to free speech or religion. The sure and immediate identification of the sender and intended recipient of questionable mail was of great importance in prison, and the use of both names allowed the inmate to use his religiously adopted name while also providing a means by which prison officials could control the inmates' use of prison mail to further unlawful activities in a way which was least restrictive of the inmates' exercise of religion. (Alabama Department of Corrections)

U.S. District Court
PUBLICATIONS
RELIGIOUS
LITERATURE

George v. Sullivan, 896 F.Supp. 895 (W.D.Wis. 1995). An inmate brought a § 1983 action alleging prison officials violated the Religious Freedom Restoration Act (RFRA) by prohibiting him from receiving white supremacist materials from the Church of Jesus Christ Christian. The district court found that prohibiting the publications was the least restrictive means of achieving a compelling state interest in security at the prison. The court noted that the mere possession of white supremacist materials fostered disruptive group formation and the inmate did not deny that the material he sought fostered animosity among individuals of different races. (Racine Correctional Inst., Wisconsin)

U.S. Appeals Court
CENSORSHIP
FAMILY
REGULATIONS

Giano v. Senkowski, 54 F.3d 1050 (2nd Cir. 1995). An inmate brought a § 1983 action challenging correctional policies which allow prisoners to possess commercially produced erotic literature but which prohibit the possession of nude or semi-nude photographs of spouses or girlfriends. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court found that the policy bore a rational relationship to legitimate penological interests in limiting inmate violence and did not violate the First Amendment. The court also found that the policy did not violate the equal protection clause and that the policy's definition of "nude" was not unconstitutionally vague. The court noted that the stated reason for the policy was to avoid violence engendered either because others saw an inmate's photographs without permission or because of insults or perceived insults on the part of others. (Clinton Correctional Facility, New York)

U.S. District Court
MUSIC
CASSETTE TAPES

Golden v. McCaughtry, 937 F.Supp. 818 (E.D.Wis. 1995). An inmate filed a § 1983 action against prison officials challenging the constitutionality of a prison policy under which cassette tapes marked "parental advisory-explicit lyrics" were previewed by prison officials, and which banned tapes that "advocate violence." The prisoner was not able to receive a rap music cassette tape he had ordered because of the policy. The district court granted the inmate's petition to proceed in forma pauperis in an earlier decision (915 F.Supp. 77). In this later decision, the court found that the regulation did not violate the inmate's First Amendment rights, noting that there were many gangs in the prison organized primarily along racial lines. The court found that the regulation did not violate due process because prisoners were able to have rejected tapes returned to their sender, to send it out with a visitor, or to send it to a person on their visitors list. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
MARRIAGE
COMMUNICATION
WITH PRISONERS
CORRESPONDENCE

Howard v. Keohane, 898 F.Supp. 459 (E.D.Ky. 1995). Inmates housed in separate facilities who claimed to be common-law spouses filed an action to enjoin federal officials from preventing them from corresponding with each other. The district court found that the inmates were not entitled to correspond with each other while the action was pending, and that the inmates did not have a common-law marriage and thus had no right to

correspond with each other. According to the court, the inmates who had a previous relationship in Louisiana, which did not recognize common law marriages, were not members of each other's "immediate family" and therefore were not entitled to correspond with each other. The court noted that the fact that a warden had previously improperly allowed the inmates to correspond with each other as common-law spouses did not entitle them to continue to correspond after they were transferred to different facilities. The court also found that a regulation prohibiting inmates who were not members of each other's immediate family from corresponding did not violate inmates' First Amendment rights. (Federal Medical Center-Lexington, Kentucky, and United States Prison-Lompoc, California)

U.S. Appeals Court
MARRIAGE

Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995). A guard at a county jail filed a § 1983 action alleging violation of her Fourteenth Amendment right to marry. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that even though the inmate whom the guard had married had been transferred to a different facility, a regulation which forbids employees from becoming socially involved with inmates in or out of jail did not violate the guard's constitutional rights. The court noted that the regulation was justified by the fear that if the guard became romantically involved with the inmate after his transfer to another facility she might become a facilitator of unlawful communication between him and others. The court also noted the officials' concern that allowing staff to become socially involved with inmates would provide an enhanced incentive for inmates to "romance" guards, and would raise serious problems with inmate morale. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
CENSORSHIP
CRITICISM
MAIL

Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995). A prison inmate who lost good time credits and had other disciplinary sanctions imposed brought a habeas corpus petition alleging violation of his First Amendment rights. The district court denied habeas corpus relief and the appeals court affirmed. The appeals court held that the sanctions against the inmate were necessary to preserve the prison's penological interest in order and did not violate the inmate's First Amendment rights. The inmate was disciplined for writing scurrilous comments about the prison warden in his "jail house lawyer" communications directed to a former inmate outside the prison. The court found that the inmate's letters were not genuine, personal outgoing mail, but rather were diatribes directed at and toward the warden and prison staff; the inmate knew that his letters would be read by staff. (Iowa State Penitentiary)

U.S. Appeals Court
NAME
MAIL

Malik v. Brown, 71 F.3d 724 (9th Cir. 1995). An inmate who had legally changed his name after he was incarcerated and after he converted to the Sunni Islam religion, filed a civil rights suit against prison officials alleging they violated his statutory and constitutional rights by refusing to process mail and documents in which he used his religious rather than his committed name. The district court denied summary judgment for the officials and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the inmate's First Amendment interest in using his legal religious name, at least in conjunction with his committed name, was clearly established at the time of the alleged violation for purposes of qualified immunity and that a reasonable officer would not believe it was proper to punish an inmate for mailing out correspondence with both his religious and his committed name on it. The court noted that allowing the inmate to put his religious name next to his committed name on outgoing mail was an obvious, easy accommodation that prison officials could have adopted. The court found that a prison notary public who refused to notarize a legal document on which the inmate's signature did not match his prison identification was entitled to qualified immunity, and that the notary would have violated the law if she had notarized the document. The court noted that the Religious Freedom Restoration Act (RFRA) was not applicable to this case because it was passed after the alleged violations took place. (Washington State Department of Corrections)

U.S. District Court
LANGUAGE

Pagan v. Dubois, 884 F.Supp. 25 (D. Mass. 1995). Latino inmates brought a civil rights action against prison officials, challenging the alleged lack of Spanish-speaking prison staff and Latino cultural programs. On the plaintiffs' motion for class certification, the district court found that the class of Latino inmates was overbroad with regard to a claim that a lack of prison staff able to communicate with inmates in Spanish violated equal protection. Latino prisoners who spoke and wrote English were not harmed by the conduct, and the plaintiffs did not claim that they did not write and speak English. In addition, the class of Latino inmates was not entitled to class certification with regard to a claim that the prison failed to provide Latino cultural programs, in view of the potential intra-class conflict between class members who were part of different Latino cultures. (Massachusetts Correctional Institution, Shirley, Massachusetts)

U.S. District Court
HAIR

Phipps v. Parker, 879 F.Supp. 734 (W.D.Ky. 1995). An inmate brought a civil rights action against prison officials, alleging that he was an orthodox Hasidic Jew and that the defendants violated his First Amendment free exercise rights by forcing him to receive a short haircut while in a segregation unit pursuant to institutional policy. The district court found that the safety concerns the defendants offered were sufficient to justify the policy. (Kentucky State Penitentiary)

U.S. Appeals Court
MEDIA ACCESS
RETALIATION

Pratt v. Rowland, 65 F.3d 802 (9th Cir. 1995). A prisoner filed a § 1983 action against prison officials, alleging their transfer of him from one prison to another and his placement in a double cell was in retaliation for his exercise of his First Amendment rights. The district court granted a preliminary injunction against the inmate, which the appeals court reversed and remanded. The appeals court held that the prisoner failed to establish that the transfer was retaliatory and was not justified by neutral institutional objectives. The prisoner had given an interview to a television network and had been successful in previous lawsuits against prison officials; the interview occurred after the officials had met to transfer the prisoner, and there was no evidence that officials at the new prison who placed the inmate in a double cell were aware of the interview. (Mule Creek Prison, California)

U.S. District Court
RELIGIOUS
LITERATURE

Reimann v. Murphy, 897 F.Supp. 398 (E.D.Wis. 1995). A prisoner sued prison officials for alleged violation of his civil rights based on the refusal of the officials to deliver issues of a newspaper which advocated the taking of human life and violence between races. The district court held that the inmate failed to show how the deprivation of particular issues of the newspaper prevented the practice of his religion or that the refusal and a cell search were retaliatory in nature. According to the court, prison officials provided irrefutable evidence that confiscation was the least restrictive means of furthering a compelling government interest in quelling violence in prisons. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
PUBLICATIONS
RELIGIOUS
LITERATURE

Sasnett v. Sullivan, 908 F.Supp. 1429 (W.D.Wis. 1995). Prisoners sought declaratory and injunctive relief in a suit challenging prison internal management procedures which they alleged violated their First Amendment rights, the Religious Freedom Restoration Act (RFRA) and due process. The court granted summary judgment for the defendants on all issues except the claim regarding procedures that prohibited the prisoners from wearing crucifixes. The court upheld the prison regulation that restricted prisoners to owning only 25 publications noting that prisoners were not forced to give up any specific books but could select which books to keep within the limit set. (Columbia, Fox Lake, Waupun and Taycheedah Correctional Institutions, Wisconsin)

U.S. District Court
LANGUAGE

Sisneros v. Nix, 884 F.Supp. 1313 (S.D.Iowa 1995). A prisoner incarcerated in an Arizona facility brought suit against Iowa prison officials alleging deprivation of his First Amendment rights while he was confined in Iowa before his transfer. The district court held that the prison regulation which required that mail sent and received by the prisoner be in the English language did not violate the inmate's First Amendment rights. (Iowa State Penitentiary)

U.S. District Court
CONVERSATION

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995). An arrestee sued an officer for civil rights violations in connection with a beating he received from the officer while in detention. The district court found that the arrestee's statement, within the officer's hearing, that the officer is an "ass" should not provoke a violent reaction from the officer and does not fall within the "fighting words" doctrine. (Andalusia Police Station, Alabama)

U.S. Appeals Court
STAFF

Troster v. Pennsylvania State Dept. of Corrections, 65 F.3d 1086 (3rd Cir. 1995). A state corrections officer brought a suit alleging violation of his First Amendment rights as the result of a regulation which required him to wear an American flag patch on his uniform. The district court denied a preliminary injunction and the appeals court affirmed, finding that the officer's refusal to wear the flag patch was not constitutionally protected as a means of symbolic protest. According to the court, a compelled speech analysis--rather than a symbolic protest analysis--was the proper vehicle for his constitutional challenge because the message the officer wished to communicate was simply opposition to the regulation on compelled expression grounds, and his preferred method of communicating his message was to violate the regulation. (State Correctional Institute at Greensburg, Pennsylvania)

U.S. District Court
PUBLICATIONS
RELIGIOUS
LITERATURE

Weir v. Nix, 890 F.Supp. 769 (S.D.Iowa 1995). A fundamentalist Christian inmate in protective custody sued prison officials for violation of § 1983 and the Religious Freedom Restoration Act (RFRA). The court also ruled that placing a limit of 25 magazines or books in the inmate's cell did not infringe upon or substantially burden his religious beliefs, noting that the single essential book for fundamentalist Christians is the Bible, and resources in the inmate's cell or available in the prison chapel provided reasonable access to reference materials to aid in the study of the Bible. But the court found that the inmate's rights to free speech and expression were violated by a prison decision to place fundamentalist Christian pamphlets on a list of prohibited publications, entitling the inmate to injunctive relief. The court was not convinced by an official's testimony that the pamphlets were negative toward other religious groups and were therefore possibly inciteful. (Iowa State Penitentiary)

1996

U.S. Appeals Court
STAFF
CRITICISM
MEDIA ACCESS

Andersen v. McCotter, 100 F.3d 723 (10th Cir. 1996). An intern with the Utah Department of Corrections sought injunctive relief against the Department and monetary relief against various corrections officials claiming she was fired in retaliation for exercising her First Amendment free speech rights. The district court granted summary judgment for the defendants, but the appeals court reversed and remanded. The appeals court held that the intern, even as an unpaid government volunteer, was entitled to First Amendment protection and that the defendants were not entitled to qualified immunity.

The court found that whether the plaintiff's interest in voicing criticism of proposed changes in the Department's sex offender policy outweighed the Department's interest in enforcing its code of conduct required remand to the district court. The plaintiff was a university student who was receiving college credit and being paid for 20 hours of work per week as an intern with the state Board of Pardons. The plaintiff was working at a community corrections center when the Department announced proposed changes in its sex offender treatment program. During an interview with a television station the plaintiff criticized the proposed changes, expressing her concern that the changes could result in the premature release of potentially dangerous sex offenders into the community. The court noted that she confined her comments to expressing her own opinion and did not disclose any confidential information. The day after the interview she was informed by the Department that she was being terminated because she had said "something negative about the Department." (Bonneville Community Corrections Center, Utah)

U.S. Appeals Court
MAIL

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The court also found that the inmate's claims that his legal mail was opened, that mail delivery had been delayed for an inordinate amount of time, and that mail had been stolen, were sufficient to state a claim. (Cook County Jail, Illinois)

U.S. Appeals Court
INSPECTION OF MAIL
INDIGENT PRISONERS

Bell-Bey v. Williams, 87 F.3d 832 (6th Cir. 1996). An inmate filed a pro se civil rights action claiming violation of his First Amendment right of access to courts by a prison official. The prisoner was denied a loan for postage unless he allowed the official to inspect his outgoing legal mail. The district court dismissed the case and the appeals court affirmed. The appeals court found that the official was entitled to qualified immunity because she neither knew nor should have known of the relevant legal standard. The court also held that the policy requiring inspection of outgoing legal mail if an indigent inmate sought a loan for postage after using his allotment of ten stamps per month, did not overburden the inmate's First Amendment right of access to courts. The policy was triggered only if an inmate sought subsidized postage, the inspection was limited to scanning legal mail, the inspection was conducted in the inmate's presence, and the inmate could seal his mail after the inspection was completed. The court held that the policy contained sufficient safeguards to limit prison officials' review of mail and therefore did not violate the inmate's First Amendment rights. (Ionia Maximum Security Facility, Michigan)

U.S. District Court
RELIGIOUS
LITERATURE

Carpenter v. Wilkinson, 946 F.Supp. 522 (N.D.Ohio 1996). An inmate brought an action against prison officials alleging violations of his rights of free exercise of religion and equal protection. The district court granted summary judgment for the defendants, ruling that the prison policy prohibiting possession of the Satanic Bible was reasonably related to legitimate penological interests and that the policy did not violate equal protection. The court noted that the Satanic Bible had great potential for fomenting trouble of all kinds in the prison setting. (Lorain Correctional Institution, Ohio)

U.S. Appeals Court
MAIL
MEDIA ACCESS
RETALIATION

Crawford-El v. Britton, 93 F.3d 813 (D.C. Cir. 1996). An inmate sued a correctional official under § 1983 alleging that the official had intentionally misdelivered boxes containing his legal papers and personal possessions. The district court denied summary judgment and dismissal for the official and the official appealed. The appeals court affirmed and remanded, and the district court dismissed the case on remand. The inmate appealed and the appeals court affirmed dismissal of two of the inmate's claims and suggested an en banc consideration of the third claim. En banc, the appeals court vacated in part and remanded, finding that the claim that the official misdelivered a box in retaliation for the inmate's communication with the press alleged a violation of the inmate's First Amendment rights, and could withstand a motion for summary judgment based on qualified immunity. (District of Columbia)

U.S. Appeals Court
CRITICISM
REDRESS OF
GRIEVANCES

Duamutef v. O'Keefe, 98 F.3d 22 (2nd Cir. 1996). An inmate filed a pro se action asserting violation of his constitutional rights as the result of a disciplinary response to his preparation and circulation of a petition seeking improvements in prison conditions. The district court granted summary judgment in favor of the defendant and the appeals court affirmed. The appeals court held that the Prison Litigation Reform Act (PLRA) filing fee requirement did not apply because the inmate's appeal had been fully briefed before either party had notice of a decision interpreting PLRA's fee provisions to apply retroactively. The appeals court also found that legitimate safety concerns justified the prison's prohibition on the preparation and circulation of inmate petitions in light of the existence of an effective procedure for inmates to communicate their individual grievances. (Gouverneur Correctional Facility, New York)

U.S. District Court
COMMUNICATION
WITH PRISONERS

Evans v. Hennessy, 934 F.Supp. 127 (D.Del. 1996). An inmate sued a guard alleging violation of his civil rights when the guard struck him twice on the head with a closed fist. The court found that evidence established that the guard struck the inmate without justification or

reasonable apprehension of physical harm, in violation of the Eighth Amendment. The court awarded damages in the amount of \$7,500. However, the court found that moving the inmate away from other prisoners to a cell closer to the guard post to prevent him from disrupting and inciting other inmates was not a violation of the inmate's First Amendment right of free speech, and the change of cells did not violate any constitutionally protected liberty interest because the inmate was not moved to a more restrictive unit. (Sussex Correctional Institution, Delaware)

U.S. Appeals Court
NAME

Fawaad v. Jones, 81 F.3d 1084 (11th Cir. 1996). An inmate brought a § 1983 action against prison officials, asserting that they violated his right to freely practice his chosen religion by requiring him to use both his chosen religious name and the name under which he was committed on all incoming and outgoing mail. The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court affirmed the lower court decision, ruling that the prison policy which required the Islamic inmate to use both names did not violate his right to practice his religion freely under the Religious Freedom Restoration Act (RFRA). (St. Clair Correctional Facility, Alabama)

U.S. District Court
STAFF

Israel v. Abate, 949 F.Supp. 1035 (S.D.N.Y. 1996). A corrections officer union and its President sought declaratory judgment to enjoin the Department of Correction (DOC), city officials and the city from prohibiting union members from posting and distributing union fliers at a control building of a correctional facility. The district court granted summary judgment for the defendants, finding that the content of the fliers, which encouraged union members to vote for the continued employment of union officials and warning of the implications of defeat, was not a matter of public concern and therefore was not entitled to First Amendment protection. According to the court, the primary purpose of the fliers was to further internal union interests and did not address the impact of the vote on the DOC or the general public, expenditures of tax money, breaches of public trust, or the integrity of DOC officials. The court ruled that the DOC reasonably restricted the hand distribution of the fliers in the control building--a non-public forum. The court noted that even if the control building was a forum, the restriction was necessary to serve a compelling state interest, and that the union had numerous other fora to disseminate their message, which had been used by the union in the past. The court found that the officials were entitled to qualified immunity. (Rikers Island Complex, New York City)

U.S. District Court
TELEPHONE

Jones v. Kelly, 937 F.Supp. 200 (W.D.N.Y. 1996). A prison inmate who had been confined to a special housing unit for 191 days brought a civil rights action alleging violation of his liberty interests. The district court granted summary judgment for the defendants, finding that the period of punitive confinement, during which the inmate was denied telephone privileges, did not violate any liberty interest protected by the due process clause. The court noted that the length of confinement in a special housing unit is not necessarily dispositive of whether a liberty interest has been implicated. (Attica Correctional Facility, New York)

U.S. Appeals Court
TELEPHONE
"PUBLISHER ONLY"
RULE

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The inmate's rights were not violated by prison officials who denied the inmate visits from persons other than his immediate family because there is no constitutional right to access to a particular visitor. Prisoners have a First Amendment right to telephone access, subject to reasonable security limitations, but the inmate failed to specify whether the alleged denial of his telephone access was total, partial or occasional and he did not allege that he was denied access for an emergency call or to call his lawyer. The court found that the inmate had produced sufficient evidence to preclude summary judgment on his First Amendment claim which challenged the prison's publishers-only rule which covered not only hardback books but also softback books, magazines and newspapers. The court found that the inmate's mail from court, unlike mail from his lawyer, was not "legal mail" and can be opened outside the inmate's presence. (Oregon State Prison)

U.S. District Court
MEDIA ACCESS

Manley v. Fordice, 945 F.Supp. 132 (S.D.Miss. 1996). Inmates brought an action challenging the constitutionality of a Mississippi statute prohibiting the use of television and radios, except in the work incentive program or the inmate discipline program. The district court held that the statute did not violate the inmates' rights under the Religious Freedom Restoration Act (RFRA) because the inmates had alternative means of religious practices such as chaplains, religious services and religious literature. The court found that denying television and radio privileges was not cruel and unusual punishment under the Eighth Amendment, even if the denial of media privileges caused psychological harm. The court found that the statute was rationally related to increasing incentives for prisoners to enter work and educational programs, and to promote good behavior, and therefore did not violate the equal protection clause or the free exercise clause of the First Amendment. (Mississippi Department of Corrections)

U.S. District Court
FREEDOM OF
INFORMATION ACT

Meyer v. Federal Bureau of Prisons, 940 F.Supp. 9 (D.D.C. 1996). A federal prisoner brought an action against the Bureau of Prisons and his case manager claiming violation of his rights under the Privacy Act, Freedom of Information Act (FOIA) and the

Constitution. The district court held that the prisoner was not entitled under the Privacy Act to amend his custody classification form, since the Bureau's regulations exempted such forms from the Privacy Act's requirements. The court ruled that summary judgment was precluded on the prisoner's FOIA claim due to genuine issues of material fact regarding the existence of documents which were the subject of the prisoner's FOIA request. The court held that the prisoner failed to establish that he had suffered any adverse determination as the result of an allegedly improper rating in his custody classification form. (Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
OBSCENITY
PUBLICATIONS

Montcalm Pub. Corp. v. Beck, 80 F.3d 105 (4th Cir. 1996). Prisoners who were denied issues of sexually explicit magazines to which they had subscribed were joined by the publisher in their suit against prison officials. The district court found that the prison policy under which the publications were denied was constitutional, in spite of its failure to provide notice to the publishers. The inmates and publisher appealed and the appeals court reversed the lower court decision, finding that the publishers were entitled to notice and an opportunity to be heard when their publication was disapproved for receipt by inmate subscribers. The court found that there is a clearly recognized First Amendment interest in those who wish to communicate with prison inmates. The court noted that inmates could challenge the denial of a publication but they could hardly mount an effective challenge because they could not see the publication. Although inmates are free to notify a publisher to ask for help if a publication is denied by prison officials, the court found that the publisher's First Amendment right must not depend on notification by inmates. (Keen Mountain Correctional Center, Virginia)

U.S. District Court
TELEPHONE
VISITING

Niece v. Fitzner, 922 F.Supp. 1208 (E.D.Mich. 1996). A prisoner and his deaf fiance brought a civil rights suit under the Americans with Disabilities Act (ADA), Rehabilitation Act, and state law, alleging discrimination and retaliation. The district court found that the prison's provision of telephone access to prisoners was a "service" within the meaning of ADA and that the prisoner's fiance stated a claim upon which relief could be granted. The court held that prison officials--in their individual capacities--were proper defendants to the ADA suit and that compensatory damages were available under ADA. The court found that the prisoner had standing to bring the suit alleging that he was discriminated against because of his known association with his deaf fiance and on the grounds that he was retaliated against when he was transferred from a minimum security facility to a maximum security facility after he complained about the lack of access to telephonic equipment allowing him to communicate with his fiance. The court also found the fiance stated a claim that prison officials discriminated against her by not allowing her to bring a plastic tumbler with handles on her visits to the prison, in retaliation for her complaint to the Department of Justice and her participation in the Department's investigation of violations of ADA in the prison. (Carson City Temporary Facility, Michigan)

U.S. District Court
PUBLICATIONS
CENSORSHIP

Olson v. Loy, 951 F.Supp. 225 (S.D.Ga. 1996). An inmate filed a pro se action against correctional institution officials asserting violations of his constitutional rights because the official refused to deliver a single copy of a magazine to the inmate. The district court held that the inmate did not have to exhaust his administrative remedies before bringing a Bivens claim which sought monetary relief, but that the prison officials did not violate the inmate's First Amendment rights by refusing to deliver the single copy of a magazine on the basis of security concerns. The prison warden had determined that the issue of Prison Life magazine contained an inflammatory article about the activities of the federal prison system, contained inflammatory information about illegal aliens incarcerated at the prison, and named officials at the prison. The warden asserted that delivery of the issue could have led to disorder or violence toward the named officials and illegal aliens. (Federal Correctional Institution at Coleman, Florida)

U.S. District Court
PUBLICATIONS

Packett v. Clarke, 910 F.Supp. 469 (D.Neb. 1996). An inmate sued correctional officials and staff alleging violations of his First Amendment rights and of the civil rights statute. The district court granted summary judgment for the defendants, finding that their policy regarding distribution of material designated as contraband was reasonably related to legitimate penological interests. The inmate had sought to obtain a catalog which contained illustrations depicting weapons concealed in everyday items and offering items such as lock picks for sale. Prison officials refused to deliver the catalog to the inmate under their policy of prohibiting incoming mail deemed to be a threat to the safety, security or good order of the facility. An alternative proposed by the inmate--restricting orders from the catalog and confining inmates to a limited area in which the catalog could be read--would not prevent the risk of disorder from prisoners who might be inspired to create weapons concealed in everyday items and was not reasonable with regard to cost, according to the district court. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
TELEPHONE

Pope v. Hightower, 101 F.3d 1382 (11th Cir. 1996). An inmate brought an action against prison officials challenging prison telephone restrictions that required inmates to designate no more than ten individuals on telephone calling lists, with the option of changing the lists every six months. The district court rendered a verdict for the inmate and the officials appealed. The appeals court reversed, finding that the calling list requirement did not violate the inmate's First Amendment right to communicate with family and friends. The court found that a rational connection existed between the restriction and a legitimate governmental

interest in reducing criminal activity and harassment of judges and jurors. The court noted that the inmate had alternative means of exercising his First Amendment right because he could receive visitors and correspond with virtually anyone he wished. (Donaldson Correctional Facility, Alabama)

U.S. Appeals Court
MAIL
REGULATIONS

Sheets v. Moore, 97 F.3d 164 (6th Cir. 1996). An inmate brought a § 1983 action against the resident manager of a correctional facility, alleging that a regulation prohibiting inmates from receiving bulk mail violated his First Amendment rights. The district court held that the regulation was unconstitutional and denied qualified immunity to the manager. The appeals court reversed and remanded, finding that the regulation did not violate the First Amendment and that the manager was entitled to qualified immunity. The inmate had objected to the rejection of a catalog that was mailed to him. The appeals court found that the regulation was legitimate and neutral, and that it was rationally related to underlying government objectives in preventing the concealment of contraband and preventing fires. The court noted that inmates had access to catalogs at the prison store. (Carson City Temporary Facility, Michigan)

U.S. Appeals Court
STAFF

Shimer v. Washington, 100 F.3d 506 (7th Cir. 1996). An inmate brought a suit challenging a corrections policy which prohibited correctional employees from writing directly to the state Prisoner Review Board on behalf of prisoners who had filed petitions for clemency. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. The appeals court found that the inmate's third-party standing did not preclude his challenge, and that concerns about whether legitimate penological concerns outweighed the potential chilling effect of the policy of guards' protected speech precluded summary judgment. The inmate alleged that prison guards would have written letters to the Board, but for the policy, and the court found that he showed that the policy could hinder the flow of information and that he suffered an injury in fact. (Illinois Department of Corrections)

U.S. District Court
MEDIA ACCESS

Sidebottom v. Schiriro, 927 F.Supp. 1221 (E.D.Mo. 1996). Prison inmates and reporters who wanted to take video cameras into correctional institutions to interview them sought a preliminary injunction requiring a lifting of a stay placed on interviews by prison officials. The district court found that the news media did not have a constitutional right of access to prison, over and above that of the general public, to interview inmates and make sound and video recordings of interviews for publication through television broadcasts. The court also found that the refusal of prison officials to admit the mother of an executed inmate as a reporter did not violate her First Amendment or equal protection rights, noting that her presence in the prison could trigger problems. The court held that it was not a violation of due process to impose a stay on news media video interviews with prison inmates without notice to inmates or an opportunity for comment, as appearance on television while incarcerated is not expected. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
RELIGIOUS
LITERATURE

Stefanow v. McFadden, 103 F.3d 1466 (9th Cir. 1996). An inmate filed a civil rights suit against prison officials alleging violation of his free exercise rights under the Religious Freedom Restoration Act and his free speech rights. Prison officials had confiscated the inmate's religious book that advocated violence and dissension against Jews and the government. The district court entered judgment in favor of the prison officials and the inmate appealed. The appeals court affirmed, holding that confiscation of the book was reasonably related to legitimate security concerns, in light of the book's combination of extreme and vile racist views with its explicit call to arms. The inmate did not contend that his religion required him to read the book or that the book was central to his religious practice, and prison officials allowed the inmate to possess some Bible study materials and a Bible, and allowed the inmate to study and pray at will. (Arizona State Prison Complex)

U.S. Appeals Court
MAIL
REGULATIONS

U.S. v. Sotelo, 94 F.3d 1037 (7th Cir. 1996). An offender convicted of mailing threatening and extortionate communications appealed a sentence requirement that restricted his communications with persons outside the prison. The appeals court affirmed in part, vacated in part, and remanded, finding that the district court lacked the authority to restrict the inmate's communication but that the restrictions were modified and construed as recommendations to the Bureau of Prisons, which is authorized to restrict communications. (Indiana State Prison and Federal Bureau of Prisons)

U.S. Appeals Court
TELEPHONE
MAIL
EAVESDROPPING

U.S. v. Workman, 80 F.3d 688 (2nd Cir. 1996). After being convicted in district court for various charges relating to their participation in a narcotics trafficking conspiracy, the three defendants appealed their convictions. The appeals court found that interception of an inmate's telephone calls did not violate his statutory or constitutional rights because the inmate had sufficient warning of the prison's telephone monitoring program such that use of the prison telephones implied consent to surveillance. Warning signs near each telephone indicated that all conversations were subject to monitoring, the inmate received an orientation handbook that further provided notice and the inmate showed in recorded conversations that he was aware that the calls might be monitored. The court noted that only a single participant in a telephone conversation needed to agree to monitoring in order to satisfy the requirements of the Fourth Amendment. The court also found that interception of an inmate's correspondence to his alleged conspirators did not violate his First Amendment rights because the interception was requested on the basis of telephone conversations in which the inmate continued to conduct

drug trade and discussed committing contract murders. (Shawangunk Correctional Facility, New York)

1997

U.S. District Court
CENSORSHIP
PUBLICATIONS

Allen v. Wood, 970 F.Supp. 824 (E.D.Wash. 1997). An inmate brought a civil rights action against prison officials challenging the rejection of some of his mail. The district court held that the rejection of sexually explicit homosexually oriented materials did not violate the inmate's First Amendment rights, nor was the rejection cruel and unusual punishment in violation of the Eighth Amendment. The inmate was given notice of each mail rejection and was provided with the opportunity to appeal. The court also held that the rejection did not violate due process or equal protection. The court upheld a policy which prohibited inmates from receiving oversized greeting cards. The court also found that a prison rule that prohibited inmates from receiving loose postage stamps in the mail did not violate the inmate's First Amendment free speech rights. According to the court, the policy advanced interests in penal security and order and prohibited contraband trading. The prisoner was afforded reasonable opportunities to buy loose postage stamps at a prison store. (Washington State Penitentiary)

U.S. Appeals Court
RETALIATION
REDRESS OF
GRIEVANCES

Clarke v. Stalder, 121 F.3d 222 (5th Cir. 1997). A state inmate who was convicted of violating a Louisiana corrections rule that prohibited inmates from threatening employees with legal redress during a "confrontation situation" filed a § 1983 action alleging violation of his First Amendment free speech rights. The inmate also alleged that prison employees retaliated against him for exercising his right of access to courts. The district court declared the prison rule unconstitutional, ordered restoration of the inmate's good time credits, and denied the retaliation claim. All parties appealed. The appeals court held that a habeas corpus petition was the proper vehicle for the inmate to employ in pursuing his claim that he was entitled to damages and for the return of his good time credits. The appeals court found that the prison rule was facially invalid, and that the record supported the denial of the retaliation claim. The disputed rule provided, in part "DEFIANCE (Schedule B): ...No prisoner shall threaten an employee in any manner, including threatening legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation and certainly does not mean the actual composition or filing of a writ, suit, etc; threatening to write to the Secretary, the Warden, or other institutional officers is not a violation." (Work Training Facility at Pineville [Camp Beauregard], Louisiana)

U.S. District Court
PRIVACY

Connor v. Clinton County Prison, 963 F.Supp. 442 (M.D.Pa. 1997). A former county prison employee brought an action against a county prison and prison officials alleging violation of provisions of the Pennsylvania whistleblower law resulting from her termination. The district court granted summary judgment in favor of the defendants. The court held that an employee who did not have an employment contract and was not covered by a collective bargaining agreement was an at-will employee and had no property interest in her position. The court found that the employee's private log of workplace activities, including a claim that her supervisor requested that she prepare work release for an inmate that did not have proper documentation, was not speech on a matter of public concern for the purposes of her claim that the public employer violated her free speech rights by terminating her after a supervisor read the log. The employee's allegations that she was terminated for documenting that a prison warden had violated the prison's internal policy was not a report of wrongdoing that implicated the Pennsylvania whistleblower law, where there was no indication that the employee intended to make the issue one for public debate. The plaintiff had worked as a secretary/records clerk. (Clinton County Prison, Pennsylvania)

U.S. Appeals Court
MAIL

Davidson v. Mann, 129 F.3d 700 (2nd Cir. 1997). An inmate brought a § 1983 action against corrections officials alleging that a prison regulation that limited access to stamps for nonlegal mail violated their First Amendment rights. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court found that a regulation that limited inmates' access to stamps for nonlegal mail to 100 per month, or 50 for inmates in special housing, was rationally related to institutional interests in avoiding a backlog of mail, allocating prison staff efficiently, and limiting thefts and disputes. The regulation allowed inmates to show extenuating circumstances and it prevented delays. The court noted that the inmate did not make specific allegations that the regulation ever actually prevented him from purchasing stamps, much less from sending outgoing nonlegal mail. (New York State Department of Correctional Services)

U.S. District Court
COMMUNICATION
WITH CORREC-
TIONS STAFF

Fisher v. Goord, 981 F.Supp. 140 (W.D.N.Y. 1997). A female state prisoner filed a civil rights action against corrections officers and officials claiming she had been raped and sexually abused by officers. The prisoner moved for a preliminary injunction transferring her to another institution and the court denied the motion. The court held that it did not have the authority to transfer the state prisoner to a federal prison, and that prison officials had taken steps to protect the prisoner from attacks in the future. A newly enacted state law classified any sexual relations between a prison employee and an inmate as statutory rape, and the court suggested that this was likely to deter any further misconduct. The court held that

the alleged consensual interactions between a correction officer and the prisoner, although inappropriate, were not cruel and unusual punishment under the Eighth Amendment, nor did the officer's alleged conduct in stroking the prisoner's hair while she was asleep and giving her an unsolicited kiss. The court also held that inmates do not have a First Amendment right to write love letters to corrections officers and that prison authorities have a significant and legitimate interest in prohibiting and punishing such conduct. (Albion Correctional Facility, New York)

U.S. Appeals Court
CLOTHING

Jackson-Bey v. Hanslmaier, 115 F.3d 1091 (2nd Cir. 1997). A prison inmate who belonged to the Moorish Science Temple (MST) of the Islamic religion brought a § 1983 action against prison officials alleging violation of the Free Exercise Clause of the First Amendment because the officials refused to allow him to wear white garments and a red fez to his father's funeral, as prescribed by MST. The district court dismissed the complaint and the appeals court affirmed, finding that the prisoner failed to show that it would have been futile to comply with a prison regulation governing registration of his religious affiliation. The prisoner did not attempt to register his MST affiliation because he alleged it would have been futile because the prison recognized only the Sunni and AMM Islamic sects at the time of the funeral. But the court found that it was not clear that the MST sect would not have been accommodated had the inmate registered, and that registration places only a slight burden on the inmate's right to religious freedom, while serving as an important and beneficial "bright line" that enables prison officials to ascertain the seriousness of an inmate's religious commitment. (Woodburne Correctional Facility, New York)

U.S. District Court
MAIL

Malsh v. Garcia, 971 F.Supp. 133 (S.D.N.Y. 1997). An inmate brought a civil rights action against prison employees arising from restrictions on his mail correspondence. The district court found that the employees did not violate the inmate's First Amendment rights to free speech and access to courts, but that fact issues precluded summary judgment for the employees on the inmate's due process claim because the inmate was disciplined for a mail correspondence infraction. The prison regulations permitted disciplinary action if an inmate submitted mail to a person on his "negative correspondence" list, prohibited "kiting" of mail, and allowed correspondence which violated the regulation to be opened and returned to the inmate. (Sullivan Correctional Facility, New York)

U.S. District Court
MAIL
PUBLICATIONS

Miniken v. Walter, 978 F.Supp. 1356 (E.D.Wash. 1997). A prisoner brought a § 1983 action against prison officials after the officials rejected delivery of a legal newsletter under a prison mail regulation governing bulk mail delivery. The district court found that application of the prison bulk mail regulation to exclude the newsletter, which did not come within the regulation's definition of bulk mail, violated the prisoner's First Amendment rights. The court also held that the officials' failure to provide a notice of rejection to either the publisher or the prisoner violated the due process clause, and that the defendants were not entitled to qualified immunity. The court noted that the prohibition of the newsletter, "Prison Legal News," was not connected to any legitimate neutral purpose and the prison had ready alternatives to the total prohibition of the newsletter. According to the court, the state does not have a statewide policy or definition for "bulk mail" and the publication is mailed via third class non-profit mail, which the post office now calls "standard mail." The prisoner had paid for a subscription to the newsletter with postage stamps and it was individually addressed to him using his name of commitment and DOC number. The prisoner had been receiving the newsletter when he was housed at another state prison. (Airway Heights Correction Center, Washington)

U.S. Appeals Court
PUBLICATIONS
CENSORSHIP

Owen v. Wille, 117 F.3d 1235 (11th Cir. 1997). A prisoner brought a § 1983 action against prison officials alleging that he was unconstitutionally deprived of access to various publications. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that prison officials did not violate the prisoner's First Amendment rights by depriving him of access to publications with nude photos, given the prison practice under which each publication sent to the prisoner underwent review by at least three prison officials before being rejected. (Palm Beach County Detention Facility, Florida)

U.S. District Court
PUBLICATIONS
CENSORSHIP
MAIL

Powell v. Riveland, 991 F.Supp. 1249 (W.D.Wash. 1997). Prisoners brought a civil rights action alleging that the policy of a corrections department in restricting incoming mail that contained sexually explicit material violated their First Amendment rights. The district court granted summary judgment for the defendants, finding that the policy was facially valid and that the copies of magazines were appropriately restricted under the First Amendment. The court noted that prisoners still had access to incoming mail and even to "nude" mail, and that the introduction of sexually explicit materials into the prison environment could be harmful to other prisoners and prison staff. Each publication was personally reviewed by prison staff to determine if it fell under the Department of Correction's restriction policy. (Washington Department of Corrections)

U.S. Appeals Court
CENSORSHIP
PUBLICATION

Shabazz v. Parsons, 127 F.3d 1246 (10th Cir. 1997). A prison inmate sued prison officials under § 1983 alleging that the officials violated his First Amendment right to free exercise of religion by denying him access to issues of a magazine. The prison had determined that the issues would create a danger of violence by advocating racial, religious or national hatred. The district court entered judgment for the officials and the appeals court affirmed, holding that the officials had a rational basis for denying the inmate access to entire issues of the magazine, rather than merely redacting the offending portions. The officials offered evidence showing that the costs to implement redacting procedures for the magazine "Muhammad Speaks" would be prohibitive. (Oklahoma)

U.S. District Court
MAIL
CENSORSHIP
OBSCENITY

Snelling v. Riveland, 983 F.Supp. 930 (E.D.Wash. 1997). An inmate sued prison officials for rejection of his letters and magazines, challenging prison regulations that ordered the rejection of sexually explicit materials mailed to inmates. The district court granted summary judgment for the officials and dismissed the inmate's First Amendment claim with prejudice. The court held that the prison regulation was not a complete prohibition of materials of a sexual nature, that prisoners had an alternative means of exercising their First Amendment rights, and that the only way to control the flow of sexually explicit material into the prison was to eliminate entry at its source. (Washington State Penitentiary)

U.S. District Court
CENSORSHIP
PUBLICATIONS

Winburn v. Bologna, 979 F.Supp. 531 (W.D.Mich. 1997). A prison inmate brought a pro se action under § 1983 alleging that the application of a prison mail regulation to bar his receipt of materials that advocated racial supremacy violated the First and Fourteenth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials, finding that the application of the regulation did not violate the inmate's First Amendment free exercise rights or RFRA, and that the officials were entitled to qualified immunity in any event. The mail regulation barred inmates from receiving materials advocating racial supremacy or ethnic purity or attacking a racial or ethnic group. The court found that the regulation was reasonable and that there was no easy alternative to barring the materials. (Chippewa Correctional Facility, Michigan)

1998

U.S. Appeals Court
REGULATIONS
BUSINESS/PRO-
FESSIONS

Abu-Jamal v. Price, 154 F.3d 128 (3rd Cir. 1998). A state inmate brought a § 1983 action challenging a prison rule that prohibited inmates from carrying on a business or profession. The inmate moved for a preliminary injunction which the district court granted in part. The appeals court affirmed in part and reversed in part, remanding with instructions. The appeals court held that the inmate showed that the rule, which was enforced against him to restrict his writings, was not reasonably related to any legitimate interests and that the inmate faced irreparable harm as the result of the prison's investigation and enforcement of the rule. The court found that the inmate was likely to show that the rule was enforced due to the content of his writings, and that his writings did not affect the allocation of prison resources, other inmates, or orderly prison administration.

But the appeals court found that the district court's injunction against enforcement of visitation rules was not warranted on the grounds that they were imposed in retaliation for the inmate's writings, and that the corrections department did not violate the inmate's access to the courts by imposing stricter visitation rules. The court found that the department had a valid, content-neutral reason for applying stricter visitation rules to the inmate's visitors, given evidence that the inmate's legal visitation privileges were being abused so that he could receive more than the permitted number of social visits. The department required verification that legal visitors were credentialed or employed by the inmate's attorney. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
VISITS
FAMILY
MARRIAGE

Africa v. Vaughan, 998 F.Supp. 552 (E.D.Pa. 1998). A prison inmate who was denied visitation with a woman who, along with the inmate, was a member of an activist group, and who the inmate claimed was his wife, brought a § 1983 action. The district court granted summary judgment for the defendants, finding that the inmate failed to show that he and the woman were married for the purposes of Pennsylvania law; therefore, the denial of visitation did not violate equal protection. The court found that no statutory marriage existed, where the inmate had not obtained a marriage license, and there was no evidence that they had entered into an agreement sufficient to create a common law marriage. (S.C.I. Graterford, Pennsylvania)

U.S. Appeals Court
OBSCENITY
PUBLICATIONS

Amatel v. Reno, 156 F.3d 192 (D.C.Cir. 1998). Inmates and publishers brought a suit claiming that a statute that prohibited the federal Bureau of Prisons (BOP) from using federal funds to "distribute or make available" to prisoners "commercially published information or material" know to be "sexually explicit or featuring nudity" violated the First Amendment. The district court held that the statute violated the First Amendment. The appeals court reversed and remanded, finding that the rehabilitation of prisoners was a legitimate and neutral government goal that supported the statute, and that Congress could have rationally seen a connection between rehabilitative goals and the effect

of distributing pornographic materials. The appeals court found that the statute and BOP regulations were reasonable, but remanded the case to determine if the statute was unconstitutionally vague. The court noted that the question was not whether the regulation in fact advanced government interests, but rather the focus was only on whether Congress might reasonably have thought it would. (Federal Bureau of Prisons)

U.S. District Court
TELEPHONE

Arney v. Simmons, 26 F.Supp.2d 1288 (D.Kan. 1998). Inmates brought a § 1983 action alleging constitutional violations in a system for providing telephone access to inmates. Prison restrictions on inmates' telephone access included a 10-person telephone call list that could be modified at 120-day intervals, monitoring of telephone calls, a prohibition on international calls from inmate telephones, and a prohibition on the inclusion of public officials on call lists. The court held that these restrictions did not violate inmates' rights to freedom of speech or freedom of association because the restrictions were content-neutral and unrelated to the purpose of suppressing expressions, inmates had significant alternative means to communicate through prison visitation and correspondence, alternatives to the restrictions would have an impact on prison resources, and there were no obvious, easy alternatives to the restrictions. The court held that the telephone system did not violate inmates' right of access to courts by permitting the monitoring or recording of attorney/client telephone conversations. (Lansing Correctional Facility, Kansas)

U.S. District Court
VISITATION

Austin v. Hopper, 15 F.Supp.2d 1210 (M.D.Ala. 1998). Inmates in a state prison system brought a class action suit under § 1983, challenging several of the system's policies and practices. The district court held that an agreement settling the inmates' chain gang claim was not subject to the limitations on prospective relief imposed by the Prison Litigation Reform Act (PLRA) and the settlement was approved. The court found that an automatic 90-day denial of visitation for inmates assigned to a shock incarceration program did not violate their First Amendment right to visitation. The inmates in the program were recidivists and parole violators. According to the court, the denial of visitation promoted the legitimate penological objectives of deterrence and rehabilitation in a common-sense way, and the inmates had mail and telephone calls as an alternative means of communication. (Alabama Department of Corrections)

U.S. District Court
VISITS
REGULATIONS
FAMILY

Blair v. Loomis, 1 F.Supp.2d 769 (N.D. Ohio 1998). An inmate and his wife, a former correctional officer, sued prison officials challenging their denial of visitation. The district court denied the plaintiffs' motion for a temporary restraining order and temporary injunction. The court held that regulations governing visitation in Ohio prisons did not create a protectable liberty interest in a right to visitation. The court found that the public interest in a safe and orderly prison system outweighed the interest of the prisoner and his wife in maintaining their family relationship and the prisoner's interest in building a relationship that would help him to lead a law-abiding life upon his release. The court found that it was reasonable for Ohio law to consider present or former correctional officers to be security risks, and to exclude them from visitation for that reason, based upon their training in security procedures and their knowledge of facility operations. The prisoner and his wife were married while the prisoner was incarcerated, and the wife admitted to falsifying information on her visitor application to conceal the fact that she had been a corrections officer. (Grafton Correctional Institution, Ohio)

U.S. District Court
MEDIA ACCESS
PRISONER ASSOCIATIONS
MAIL
RETALIATION

Castle v. Clymer, 15 F.Supp.2d 640 (E.D.Pa. 1998). A state prisoner brought a § 1983 action against prison officials alleging that he was transferred to another facility in retaliation for exercise of his First Amendment free speech rights. The district court entered judgment for the prisoner, finding that transferring him based on his correspondence with a newspaper reporter violated his right to free speech. The court held that transferring the prisoner because he participated in a preauthorized interview with a reporter violated his right to procedural due process, as did transferring him based on his activities as president of an advocacy group for life prisoners. The court found that the prisoner had a free speech right to send outgoing correspondence to a newspaper reporter, subject to reasonable prison regulations. The court held that compensatory damages were not warranted for the prisoner's loss of his position as a para-law library clerk, and that punitive damages were not warranted because there was no finding that the officials acted with callous indifference or an evil motive; the court awarded the prisoner nominal damages of \$1. The court declined to order the receiving facility to give the prisoner the same job and the single-cell status the prisoner enjoyed at the original facility, because the receiving facility was not involved in the constitutional violations that gave rise to the case. In its decision, the court outlined three tests to determine whether the prisoner was transferred in retaliation for exercising his constitutional rights: the "but for" test, the "significant factor" test, and the "narrowly tailored" test. (State Correctional Institution-Dallas, Pennsylvania)

U.S. Appeals Court
HUNGER STRIKE

Grand Jury Subpoena John Doe v. U.S., 150 F.3d 170 (2nd Cir. 1998). A person who was confined for contempt of court for refusing to testify before a grand jury despite being granted immunity. The contemnor brought a motion for his release. The district court denied the motion and he appealed. The appeals court affirmed, finding that confinement for

civil contempt of court was coercive rather than punitive and its sole purpose was to compel the contemnor to provide the requested grand jury testimony. The appeals court held that a force-feeding order issued against the contemnor, who had started a hunger strike did not violate the contemnor's constitutional rights. The court noted that the institution in which the contemnor was confined was responsible for his care while incarcerated and there was a compelling governmental interest for force-feeding the inmate. (U.S. District Court, Southern District of NY)

U.S. Appeals Court
PRETRIAL DE-
TAINÉES
TELEPHONE

Halvorsen v. Baird, 146 F.3d 680 (9th Cir. 1998). A detainee who was questioned by police and then involuntarily committed to a detoxification facility overnight filed a § 1983 action alleging constitutional violations. The district court entered judgment in favor of the defendants on a jury verdict and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that a private non-profit firm that provided involuntary detoxification services did not enjoy qualified immunity from § 1983 liability. The court found that the private firm was not a private individual that was briefly deputized to assist government actors, in light of its nature as a company that was organized to assume a major lengthy administrative task. The appeals court also held that confinement for six hours overnight was not too short, as a matter of law, to trigger a due process right to communicate with someone outside the facility. But the court found that a facility can control the manner and timing of a telephone call from a detainee, so that it comports with reasonable institutional requirements. The court found that the detainee was given sufficient notice or opportunity to demonstrate sobriety to satisfy due process, where testimony indicated that he was told why he was at the facility and that he was observed for indications of drunkenness or sobriety. (Central City Concern, and City of Portland, Oregon)

U.S. District Court
PRETRIAL DETAINEES
TELEPHONE

Hanson v. Sangamon County Sheriff's Dept., 991 F.Supp. 1059 (C.D.Ill. 1998). An arrestee who was deaf alleged failure to provide him with an adequate means of communication in his suit against a county, a sheriff and a sheriff's department. The district court held that the arrestee stated a claim under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he stated a § 1983 claim against the sheriff. The arrestee alleged that he was denied, due to his disability, the opportunity to post bond and make a telephone call when the department failed to provide, despite his repeated requests, alternatives to a conventional telephone such as an interpreter or a text telephone device (TTD). The arrestee alleged that the sheriff maintained an express policy of forbidding officers from allowing deaf arrestees to use a TTD which was stored in an office. The court denied qualified immunity for the sheriff, noting that while there may have been a lack of caselaw directly on the point, the ADA and Rehabilitation Act had been enacted several years prior to the arrest, and at least two Courts of Appeal had held that the Rehabilitation Act was applicable to prisons and prisoners. The plaintiff was arrested and informed officers that he was deaf. The officers did not attempt to communicate with him, but rather placed him in a police van with eight to ten other arrestees and transported him to a local jail. Throughout the night the arrestee attempted to notify the officers of his need for alternative assistance in contacting his friends and/or relatives, to no avail. He was eventually assisted in making a telephone call by an officer and made arrangements to be released on bail, several hours after all of the others who were arrested at the same time had been released. (Sangamon County Jail, Illinois)

U.S. Appeals Court
REGULATION
GROOMING

Hines v. South Carolina Dept. Of Corrections, 148 F.3d 353 (4th Cir. 1998). One hundred South Carolina inmates challenged the constitutionality of a prison grooming policy that required all male inmates to keep their hair short and their faces shaven. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the rule did not violate inmates' right to free exercise of religion, despite its incidental effect on the religious practices of some inmates. According to the court, the policy was neutral and the generally applicable rule was implemented to maintain order in prisons, which was reasonably related to legitimate penological interests. (South Carolina Department of Corrections)

U.S. District Court
FREE SPEECH

James v. Coughlin, 13 F.Supp.2d 403 (W.D.N.Y. 1998). A state inmate brought a § 1983 suit against corrections officials alleging constitutional violations in connection with a search. The district court granted summary judgment to the officials, finding that the curtailment of the inmate's First Amendment rights during a pat-frisk was justified. The inmate had failed to comply with pat-frisk procedures and was increasingly loud and boisterous and he was ordered to be quiet by a corrections officer. The court noted that the inmate had other means of expressing his dissatisfaction, such as the grievance procedure. The court found that the alleged conduct of a corrections officer in pushing his genital area against the inmate during the pat-frisk search, and wedging the inmate's pants into his buttocks, was a de minimus activity that did not implicate the Eighth Amendment. The court also found that the alleged conduct of a corrections officer in pushing the inmate back into his cell after the search did not involve the use of excessive force in violation of the Eighth Amendment. The inmate claimed he injured his back, and complained that he was denied medical treatment; the court concluded that corrections officials were not deliberately indifferent to his medical needs because the need for treatment was not apparent, and he was examined by a nurse, who found no injuries, within a half hour. The inmate was denied a single shower after the search because of his conduct, and the court found that this did not implicate any constitutionally protected liberty interest. The court held that placing the

inmate on a restricted diet for three days did not violate the Eighth Amendment, absent an allegation that the inmate failed to receive a nutritional meal for the three days or that he suffered an imminent health risk because of the diet. (Attica Correctional Facility, New York)

U.S. District Court
LITERATURE
PRIVACY
PUBLICATIONS

Leitzsey v. Coombe, 998 F.Supp. 282 (W.D.N.Y. 1998). An inmate brought a § 1983 action against prison officials after he was disciplined for violating a prison rule that prohibited possession of materials pertaining to unauthorized organizations. The district court held that the prison rule did not violate the inmate's free speech or free exercise rights, and that the rule was not unconstitutionally vague. According to the court, it was reasonable and essential for prison officials to prohibit inmate participation in, and possession of, materials relating to organizations that foster disorder and threaten the security of the institution. (Attica Correctional Facility, New York)

U.S. District Court
CENSORSHIP
RELIGIOUS
LITERATURE

Maberry v. McKune, 24 F.Supp.2d 1222 (D.Kan. 1998). A Thelemic inmate brought a § 1983 action against a department of corrections and a correctional facility alleging violations of religious freedom and due process. The district court granted summary judgment for the defendants. The court held that prison officials' denial of certain ritual items and limitation of Thelemic worship to one time per week in the presence of outside clergy were reasonably related to the legitimate penological interests of the prison. The inmate was denied access to stones, a dagger, a caldron and a sword for reasons of internal safety and security. The court upheld the censorship of a chapter of a book which discussed blood sacrifices and found that the censorship of the inmate's inscribed letter to another inmate was justified. The court found that a regulation that placed a spending limit on the inmate's use of funds for payment to outside vendors did not violate equal protection or the ex post facto clause; the limits prevented the inmate from purchasing certain books. The court noted that an incentive program sought to reward prisoners for taking responsibility and attempting to become better citizens by allowing them to exceed the spending limit, and an inmate could aid his own cause by working to achieve higher levels in the incentive program. Similarly, the court found that a prison regulation which imposed quantity and value limitations on property which inmates were allowed to possess did not violate the inmate's equal protection or due process rights, despite his contention that the regulation limited his access to religious books. The court held that the regulation was necessary to achieve the prison administration's goals of minimizing violence and securing safety within prison walls. The court acknowledged that officials had acquired significant information about the Thelemic faith to accommodate the inmate, had arranged for a visit from outside Thelemic clergy, and had purchased and distributed the primary religious text. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
MEDIA ACCESS
HUNGER STRIKE

Stefanoff v. Hays County, Tex., 154 F.3d 523 (5th Cir. 1998). An inmate challenged denial of good time credits in a civil rights action. The district court denied summary judgment for the defendants. The appeals court dismissed in part and reversed in part. The appeals court held that the inmate had adequately alleged an equal protection violation because he was denied good time credit simply because he had been sentenced by a jury. The sheriff had determined that the jury decision more closely reflected the "conscience of the community" than a decision of an elected judge, which the appeals court found to be arbitrary and irrational. However, the court held that the sheriff had a legitimate basis for denying good time credit based on the inmate's disruptive activities. The inmate had also claimed that he was denied good time credit in retaliation for engaging in a hunger strike and corresponding with the media, in violation of his First Amendment rights. The court held that a prisoner's hunger strike may be protected by the First Amendment if it was intended to convey a particularized message. But the court found that the inmate's activities were sufficiently disruptive that the defendant had a legitimate penological interest in curtailing them, noting that the inmate had retained other reasonable and effective methods of communicating his views. The appeals court concluded that the sheriff was entitled to qualified immunity. (Hays County Jail, Texas)

U.S. District Court
MARRIAGE

Theck v. Warden, I.N.S., 22 F.Supp.2d 1117 (C.D.Cal. 1998). An excludable alien, who had no country to which to be deported, petitioned for habeas corpus relief, challenging the constitutionality of his ongoing, potentially indefinite, detention. The district court held that the alien had a constitutional right to marry and that the refusal of the Immigration and Naturalization Service (INS) to allow the alien to marry a Spanish citizen would give rise to a Fourth Amendment violation. The court noted that while the alien had no right to be admitted to the United States, the justification for prolonged detention presumes a lack of alternatives and when a viable alternative presents itself, continued detention may become unreasonable. The alien had attempted to enter the United States at John F. Kennedy International Airport using a fraudulent Canadian passport. (Immigration and Naturalization Service)

U.S. Appeals Court
CORRESPONDENCE
FAMILY
MAIL

U.S. v. Felipe, 148 F.3d 101 (2nd Cir. 1998). A defendant who pled guilty in federal court to conspiracy and firearms offenses, and a codefendant, asked the district court to modify restrictions on their communications with persons outside of prison. The district court affirmed the restrictions, finding that prison officials had reasonable cause to intercept the prisoner's correspondence, given their knowledge that the prisoner was a leader of a suspect organization, had violated prison regulations relating to mail, was actively recruiting new members, and had written about the commission of illegal acts. The appeals court held that a

Postal Service regulation that indicated that the Service was usually the only agency that was legally permitted to maintain postal cover did not apply to the prison officials' interception of the prisoner's outgoing mail, given the exception for correctional facilities. The appeals court found that the portion of the prisoner's sentence that restricted communications with all persons except counsel and close family members did not exceed the court's authority to limit the associational rights of defendants convicted of racketeering offenses because the conditions were reasonably formulated to prevent the defendant from continuing his illegal activities while incarcerated. The defendant had previously ordered at least six murders while in prison, resulting in several deaths and injuries to the targets and bystanders. (Collins Correctional Facility and Attica Correctional Facility, New York)

U.S. District Court
MEDIA ACCESS
MAIL

Zimmerman v. Tippecanoe Sheriff's Dept., 25 F.Supp.2d 915 (N.D.Ind. 1998). A state prisoner brought a § 1983 action against county officials and employees alleging constitutional violations during his pretrial detention period in a county jail. The district court found in favor of the defendants for all but one of the allegations. The court held that even if a county jail employee hid the prisoner's outgoing mail rather than delivering it, the action did not violate the Fourth Amendment because another employee found the mail and ensured that it was mailed, so that the prisoner suffered no harm. The court found no constitutional violation of access to court because a jail official required the prisoner to hold conversations with his attorney in a room equipped with a two-way intercom system because the official did not actually listen to the conversation but merely stood in a control room. But the court found triable issues of fact regarding whether the prisoner suffered an injury when a jail employee handcuffed him immediately after an escape attempt. (Tippecanoe County Jail, Indiana)

1999

U.S. Appeals Court
INSPECTION OF MAIL

Altizer v. Deeds, 191 F.3d 540 (4th Cir. 1999). A prisoner brought a § 1983 action alleging interference with his outgoing mail. The district court granted partial summary judgment to the prisoner and the defendants appealed. The appeals court reversed, finding that the opening and inspecting of an inmate's outgoing mail does not violate the First Amendment. (Keen Mountain Correctional Center, Virginia)

U.S. Appeals Court
FREE SPEECH

Chatin v. Coombe, 186 F.3d 82 (2nd Cir. 1999). A state inmate who was disciplined for engaging in individual prayer in a prison recreation yard brought a § 1983 action against prison officials alleging violation of his constitutional rights. After a bench trial the district court held that the rule under which the inmate was punished was unconstitutionally vague, and enjoined its enforcement under similar circumstances. The appeals court affirmed, finding that the inmate's prayer could not be viewed as a "religious service" or "religious speech" as intended by a rule barring unauthorized services or speeches. The court found that the inmate was not afforded adequate notice that individual, silent, demonstrative prayer was prohibited outside the cell or other designated areas. The court held that the rule failed to provide sufficiently explicit standards for those who applied it. The appeals court also ruled that the fee cap imposed by the Prison Litigation Reform Act (PLRA) applied to the attorneys appointed for the inmate after PLRA's enactment, even though the action was filed before PLRA's enactment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
PUBLICATIONS
RELIGIOUS LITER-
ATURE

Chriceol v. Phillips, 169 F.3d 313 (5th Cir. 1999). A state prisoner brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion and denial of his access to the courts. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that the officials' policy of withholding prisoner mail that had a potential of producing violence by advocating racial, religious or national hatred did not violate the prisoner's right to free exercise of religion. The prisoner claimed he was an ordained minister associated with the Aryan Nations/Church of Jesus Christ Christian. The facility policy provided for notice to the prisoner whenever mail was withheld, and the opportunity to file a grievance to protest the decision. The court also held that denial of the prisoner's request to withdraw money from his prison account to pay court costs to institute a civil rights action against them did not constitute denial of his right to court access, where there was no evidence of any actual injury in that the prisoner's fee was paid and the complaint was successfully filed. (Winn Correctional Center, Louisiana)

U.S. District Court
HAIR

Cofer v. Schriro, 176 F.3d 1082 (8th Cir. 1999). A state inmate brought a § 1983 action alleging that a prison regulation that required him to cut his hair infringed on his First Amendment right to free exercise of his Rastafarian religion. The district court dismissed the case as frivolous but the appeals court reversed in part and remanded, finding that the free exercise claim was not frivolous. The appeals court noted that it could not find any evidentiary basis in the district court record which supported the conclusion that security concerns permitted the hair requirement. (Missouri)

U.S. District Court
PUBLICATIONS
INSPECTION OF MAIL

Crofton v. Roe, 170 F.3d 957 (9th Cir. 1999). A prisoner challenged a prison regulation that prohibited the receipt of any book, magazine, or other publication unless the prisoner ordered it from the publisher and paid for it out of his/her own prison account. The district court enjoined the enforcement of the regulation but denied the prisoner's claim for damages, finding

the defendants were entitled to qualified immunity. The appeals court affirmed, finding that a blanket prohibition on gift publications violated the First Amendment. The appeals court also found that a temporary delay in the delivery of publications did not violate the First Amendment because the policy of diverting publications through the property room was reasonably related to the prison's interest in inspecting mail for contraband. (Washington Department of Corrections)

U.S. Appeals Court
MUSIC
PUBLICATIONS
OBSCENITY
MAIL

Frost v. Symington, 197 F.3d 348 (9th Cir. 1999). An inmate brought a suit seeking damages from Arizona Department of Corrections officials who allegedly withheld issues of pornographic magazines and returned without authorization music CDs he had ordered. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the inmate had a Fourteenth Amendment due process liberty interest in receiving notice that his incoming mail was being withheld by prison authorities. But the appeals court held that the prison regulation that banned sex-based publications depicting penetration did not violate the inmate's First Amendment rights. The court found that there was a rational connection between the policy and the government's interests of ensuring the safety of inmates and prison officers, and protecting female officers and others from abuse and harassment. The court noted that inmates could access sexually explicit publications that did not depict actual penetration. The court also found that the inmate's First Amendment rights were not violated when, at the request of the seller, the Department returned music CDs the inmate had ordered upon determining that the inmate had not paid for them. (Arizona Department of Corrections)

U.S. District Court
CASSETTE TAPES
MUSIC

Herlein v. Higgins, 172 F.3d 1089 (8th Cir. 1999). A former inmate sued corrections officials challenging a ban on inmate possession of music cassettes which carry a warning for explicit lyrics. The district court denied the inmate's request for an injunction but granted declaratory relief and awarded nominal damages. The appeals court reversed, holding that the ban on music cassettes did not violate the First Amendment. According to the court, the ban on such cassettes related to the legitimate penological objective of maintaining security and was neither arbitrary nor irrational. (Mount Pleasant Correctional Facility, Iowa)

U.S. Appeals Court
LITERATURE
OBSCENITY

Mauro v. Arpaio, 188 F.3d 1054 (9th Cir. 1999). An inmate in a county jail system brought a § 1983 action challenging the constitutionality of a sheriff's department policy prohibiting inmates from possessing "sexually explicit" material. The district court granted summary judgment for the county and the appeals court affirmed, finding that the policy which excluded all material containing frontal nudity was reasonably related to legitimate penological interests of maintaining jail security, rehabilitating inmates and reducing sexual harassment of female detention officers. According to the court, the policy was neutral in that jail administrators drew a distinction based solely on the basis of the materials' potential effect on the jail, and was not so remote as to render the policy arbitrary or irrational. The court noted that the jail's goal of rehabilitation was legitimate only as it applied to convicted inmates housed at the jail, and was not a legitimate goal to the extent that it was attempting to impose rehabilitation on pretrial detainees. (Maricopa County Jail System, Arizona)

U.S. Appeals Court
FREE SPEECH

Murphy v. Shaw, 195 F.3d 1121 (9th Cir. 1999). An inmate law clerk filed a § 1983 action for injunctive and declaratory relief alleging he was punished in violation of his constitutional rights for sending a letter containing legal advice to another inmate. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court reversed and remanded with instructions. The appeals court held that the inmate was acting as a law clerk when he wrote the letter to another inmate and that the punishment imposed for sending the letter was an exaggerated response that violated the inmate's First Amendment rights. According to the court the letter was speech that would, outside the prison context, enjoy First Amendment protection, and the fact that such speech occurred within the prison wall did not take it entirely outside the reach of the First Amendment. The court noted that although the inmate was not formally assigned by the prison's law librarian to serve as the other inmate's law clerk, he knew that counsel had been appointed for the other inmate and the letter was plainly related to the charges pending against the other inmate. (Montana State Prison)

U.S. Appeals Court
PRISONER
ASSOCIATIONS

Nicholas v. Miller, 189 F.3d 191 (2nd Cir. 1999). An inmate brought a pro se § 1983 action against state prison officials alleging that they violated his constitutional rights when they denied his request to form a prisoners legal defense center. The district court dismissed the complaint as frivolous but the appeals court vacated the decision and remanded with case with instructions. The appeals court held that genuine factual issues as to the reasonableness of the denial precluded summary judgment, but that the officials were entitled to qualified immunity because the inmate's First Amendment associational right to form an inmate legal services organization was not clearly established at the time of the officials' denial. The inmate had earned a college degree and had concentrated on the study of law while confined. He had practiced as a jailhouse lawyer while at the facility. (Woodbourne Correctional Facility, New York)

U.S. District Court
CORRESPONDENCE
FAMILY

Rizvi v. Crabtree, 42 F.Supp.2d 1024 (D.Or. 1999). An inmate who had been placed in administrative segregation, transferred and barred from communicating with his son who was another inmate, for allegedly planning an escape, petitioned for habeas corpus relief. The district court granted the petition, finding that the inmate had been denied procedural due

process. According to the court, the inmate should have been given advance written notice of alleged violations, a written statement of fact finders as to evidence relied on and reasons for disciplinary action, and the opportunity to call witnesses and present documentary evidence in his defense. The inmate and his son had been placed in administrative segregation along with three other men after an informant told prison staff that they were planning an escape. The group was then transferred to a local county jail where they remained in administrative segregation for two more months, and then were transferred to different federal institutions. (Federal Bureau of Prisons, FCI Safford, Arizona)

U.S. Appeals Court
MAIL
CORRESPONDENCE

Rowe v. Shake, 196 F.3d 778 (7th Cir. 1999). A state prisoner and a person who was his frequent correspondent filed a § 1983 complaint against prison employees alleging violations of their First Amendment rights and of the prisoner's due process rights resulting from delays in incoming mail sent by the correspondent. The district court dismissed the claims and the appeals court affirmed. The appeals court held that although the correspondent had standing to assert a violation of his First Amendment rights, the relatively short-term and sporadic delays in the prisoner's receipt of mail did not violate either the correspondent's First Amendment rights or the prisoner's due process rights. The court noted that non-prisoners have a First Amendment right to correspond with prisoners and that the government's unjustifiable interference would violate the First Amendment rights of both the recipient and the sender. (Wabash County Correctional Facility, Indiana)

U.S. Appeals Court
RELIGION

Sasnett v. Litscher, 197 F.3d 290 (7th Cir. 1999). State inmates brought a civil rights action seeking to enjoin a prison regulation that limits their possession of crosses. The district court found that the regulation violated the provisions of the Religious Freedom and Restoration Act (RFRA) and the appeals court affirmed. The United States Supreme Court vacated the judgment and remanded the case. The district court granted summary judgment for the defendants and the inmates appealed. The appeals court reversed, finding that the action was not rendered moot by a new regulation and that the regulation violated the First Amendment's free exercise principles. The regulation allowed inmates to wear a cross only when it was attached to a rosary and the appeals court found that the regulation discriminated against inmates of the Protestant faith. (Wisconsin Department of Corrections)

U.S. District Court
PUBLICATIONS

Spellman v. Hopper, 95 F.Supp.2d 1267 (M.D.Ala. 1999). An inmate in administrative segregation in a state prison sued corrections officials challenging the corrections department's policy that prohibited prisoners from receiving subscription magazines and newspapers while in administrative segregation. The district court entered judgment for the inmate, finding that an absolute prohibition on subscription magazines and newspapers violated the First Amendment. The court noted that the policy was not rationally related to the goals of preventing fires, promoting health and sanitation through the control of pests and flooding, maintaining security by deterring concealment of contraband, fabrication of weapons, and altercations between inmates and guards over inmate property, or promoting "discipline." (William E. Donaldson Correctional Facility, Alabama)

U.S. District Court
FAMILY

Turner v. Wilkinson, 92 F.Supp.2d 697 (S.D. Ohio 1999). An inmate and her husband brought an action seeking declaratory and injunctive relief to require prison officials to allow the husband to attend the birth of the couple's child. The district court entered a temporary restraining order and the husband was permitted to be present during the birth of his child. The plaintiffs moved for attorney fees and the court held that they were entitled to them under the catalyst theory. The husband had given a newspaper interview about prison conditions and the court found that the prison had violated equal protection because similarly-situated inmates had been allowed to have their spouses present during the birth of their children. (Franklin Pre-Release Center, Ohio)

U.S. District Court
TELEPHONE
PRIVACY

U.S. v. Peoples, 71 F.Supp.2d 967 (W.D.Mo. 1999). A defendant who was charged with killing a witness to prevent testimony moved to suppress recordings of telephone conversations and in-person meetings that he had with a prisoner. The district court denied the motion, finding that the recordings did not violate the Fourth Amendment rights of the defendant. According to the court, a visitor of a prisoner did not have a reasonable expectation of privacy in conversations with the prisoner, or in telephone calls involving the prisoner. The recordings were made as part of a general recording program undertaken to maintain prison safety by reducing the flow of contraband into the prison. (Corrections Corporation of America facility, Leavenworth, Kansas)

U.S. District Court
MAIL
PRETRIAL
DETAINEES

U.S. v. Rollack, 90 F.Supp.2d 263 (S.D.N.Y. 1999). A defendant moved to suppress evidence seized in prison mail and cell searches that occurred during his pretrial detention. The district court held that the defendant had a reasonable expectation of privacy in his prison mail when a search is performed or initiated by law enforcement officials other than those in charge of a prison and is unrelated to institutional security concerns. The court noted that a prisoner had a reasonable expectation to privacy in his mail as to searches that did not target concealed weapons, drugs or other items clearly related to security inside the prison. The court held that seizure of letters from his jail cell and mail was valid despite the overbreadth of warrants that authorized seizure. The court found that seizure of non-mail writings and photographs from the defendant's cell was invalid. (Charlotte-Mecklenburg County Central Jail, North Carolina)

U.S. Appeals Court
LITERATURE
PUBLICATIONS

Waterman v. Farmer, 183 F.3d 208 (3rd Cir. 1999). Two prisoners at a facility for sex offenders who had exhibited "repetitive and compulsive" behavior filed a § 1983 action challenging a New Jersey statute that restricted their access to pornographic materials. The district court granted a preliminary injunction for the prisoners and the statute was found unconstitutional. Officials were permanently enjoined from enforcing it. The appeals court reversed, finding that the statute was neutral, had a legitimate penological interest in rehabilitating the most dangerous and compulsive sex offenders, and provided prisoners with an alternative means of exercising their constitutional rights. The court noted that the cost of implementing a case by case alternative would be substantial and that any attempt to accommodate the prisoners' asserted rights would have been unduly burdensome on correctional officers and the allocation of prison resources. (Adult Diagnostic and Treatment Center, New Jersey)

2000

U.S. District Court
LITERATURE
PUBLICATIONS

Aiello v. Litscher, 104 F.Supp.2d 1068 (W.D.Wis. 2000). Prisoners brought an action on behalf of themselves and as representatives of a class of similarly situated prisoners contending that a policy enacted by the state corrections department that prohibited access to allegedly sexually explicit materials violated their rights to freedom of speech and due process of law. The district court denied summary judgment in favor of the defendants, finding that the regulation was an impermissible violation of the prisoners' First Amendment rights and that the defendants failed to establish that the regulation was not unconstitutionally vague. According to the court, the regulation prohibited access to "such great works of art and literature as Michelangelo, the Bible and Walt Whitman, as well as countless others whose depictions of nudity and sexual intimacy were enlightening and inspiring rather than 'degrading and disrespectful.'" The court found that the prisoners did not have an alternative means to exercise their First Amendment rights. The prison regulation prohibited prison officials from distributing certain incoming correspondence to inmates for reasons that included if it was "in whole or in part, pornography." The regulation defined pornography as "...any materials, whether written, visual, video or audio representation or reproduction that depicts any of the following: (a) human sexual behavior; (b) sadomasochistic abuse... (c) unnatural preoccupation with human excretion; (d) nudity which appeals to the prurient interest in sex; (e) nudity which is not part of any published or printed materials, such as a personal nude photograph." (Wisconsin Department of Corrections, Division of Adult Institutions)

U.S. District Court
PRIVACY
REGULATIONS
FREE SPEECH

Ballance v. Virginia, 130 F.Supp.2d 754 (W.D.Va. 2000). A state prison inmate who was convicted of sexual crimes involving juveniles brought a § 1983 action against corrections officials alleging wrongful confiscation of photographs of children from his cell. The district court held that the confiscation complied with the First Amendment even though only a small percentage of photographs were of seminude children. The court noted that state officials provided minimum procedural safeguards, including notice of confiscation, provision of avenues for protest, and review of the prisoner's allegation of a First Amendment violation by someone who was not involved with the confiscation. The court found that the confiscation of all photographs served to further the prison's interests in both rehabilitation and institutional security because the possible discovery of the cache of photos by other prisoners created a potential for disturbance. According to the court, a prisoner has no Fourth Amendment right to be free from unreasonable searches of his cell because he has no expectation of privacy in his cell. (Wallens Ridge State Prison, Virginia)

U.S. District Court
HAIR

Deblasio v. Johnson, 128 F.Supp.2d 315 (E.D.Va. 2000). State prisoners brought a § 1983 action challenging a state corrections department's grooming regulation that required all male inmates' hair to be no more than one inch thick and precluded special styles such as braids or mohawks. The district court granted summary judgment in favor of the defendants, finding that the regulation did not violate the inmates' rights under the First or Fourth Amendments. The court also found that punishment for violations of the regulation, which included isolation and loss of recreation and visitation privileges, did not violate the Eighth Amendment. The court held that even if the regulation had a disparate impact on inmates of a certain religion, it did not violate the equal protection clause. The court also found that the regulation did not violate the equal protection clause with regard to alleged gender discrimination, where the prison experience and data demonstrated that male inmates were more violent than female inmates, and therefore contraband hidden in the hair of male inmates posed a greater security threat. (Virginia Department of Corrections)

U.S. Appeals Court
FREE SPEECH

Edwards v. Johnson, 209 F.3d 772 (5th Cir. 2000). A detainee alleged he was deprived of his due process and First Amendment rights when he was given fifteen days of disciplinary segregation after being found to have had unauthorized contact with a member of the general public by handing a flier to a visitor without permission. The district court dismissed the detainee's actions and the appeals court affirmed. The appeals court held that the detainee's 11-day pre-hearing detention and 15-day disciplinary detention did not violate the detainee's due process rights. The detainee had handed a member of a group who was touring the prison a note that stated "Welcome to Louisiana, home of the INS Terrorist-Styled Concentration Camp where all constitutional rights are dispensed solely on the basis of national origin." (Federal Detention Center, Oakdale, Louisiana)

U.S. Appeals Court
FREEDOM OF INFOR-
MATION ACT

Fisher v. King, 232 F.3d 391 (4th Cir. 2000). A state inmate brought a § 1983 action against a county court clerk in his individual and official capacities, alleging that the clerk's refusal to make a recording of a 911 call available for copying and inspection violated his constitutional rights. The inmate also sought to have the Virginia Freedom of Information Act "prisoner exclusion" provision found to be unconstitutional. The district court granted summary judgment in favor of the clerk and the inmate appealed. The appeals court affirmed, finding that the statutory provision did not carry a threat of prosecution for its violation nor did it restrict expressive speech, and was therefore not subject to challenge on the grounds that it was facially overbroad under the First Amendment. The court noted that the inmate did not show that he was treated any differently than non-prisoners with regard to his access to the 911 recording. (Gloucester County, Virginia)

U.S. District Court
MARRIAGE
FAMILY

Gerber v. Hickman, 103 F.Supp.2d 1214 (E.D.Cal. 2000). A state prisoner serving 100 years to life brought a § 1983 action against a warden, alleging violation of his constitutional right to procreate by refusing to allow him to artificially inseminate his wife. The district court dismissed the case. The court held that the prisoner did not have a right to procreate through artificial insemination while incarcerated, nor to have conjugal visits. The court found that male inmates were not similarly situated to female inmates with respect to the decision to terminate a pregnancy and therefore the warden's refusal to allow male inmates to engage in artificial insemination while not requiring female inmates to terminate their pregnancies did not violate equal protection. (Mule Creek State Prison, California)

U.S. Appeals Court
NAME

Hakim v. Hicks, 223 F.3d 1244 (11th Cir. 2000). A death row inmate filed a § 1983 action alleging violation of his right to free exercise of religion because prison officials refused to recognize his legally changed religious name within prison. The district court directed the corrections department to comply with its own dual-name policy on the inmate's prison identification card and the appeals court affirmed. The appeals court held that the corrections department's policy violated the inmate's free exercise rights. (Union Correctional Facility, Raiford, Florida)

U.S. District Court
HAIR

Jackson v. District of Columbia, 89 F.Supp.2d 48 (D.D.C. 2000). Federal prisoners and District of Columbia prisoners who were serving their sentences in facilities operated by the Virginia Department of Corrections challenged the Department's grooming policy. The district court held that the policy, which required male prisoners to be clean-shaven and to keep their head hair short, did not violate the Religious Freedom Restoration Act (RFRA) nor the Free Exercise Clause of the First Amendment, even though it substantially burdened the prisoners' sincerely held beliefs. The court found the policy to be the least restrictive means to address the Department's compelling interests in prison security, gang elimination, inmate identification, and health and sanitation. (Virginia Department of Corrections)

U.S. Appeals Court
TELEPHONE

Johnson v. State of Cal., 207 F.3d 650 (9th Cir. 2000). A state inmate brought a pro se action for damages and declaratory relief alleging violation of his rights because officials segregated inmates by race and extorted money from inmates by overcharging for telephone use. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the inmate's allegations supported his claim for racial discrimination in inmate housing decisions and that officials were aware of the deleterious effects of the practice and the practice persisted despite a court order to house inmates in a race-neutral manner. The appeals court affirmed the dismissal of the telephone charges allegation, holding that there was no authority for the proposition that inmates were entitled to a specific rate for telephone calls and that the facts alleged did not support the conclusion that the rate charged was so exorbitant as to deprive inmates of telephone access all together. (California Department of Corrections)

U.S. District Court
PRISONER
ASSOCIATIONS

Nicholas v. Miller, 109 F.supp.2d 152 (S.D.N.Y. 2000). A prisoner brought a pro se § 1983 action against state prison officials alleging violation of his rights when they denied his request to form a prisoners advocacy center, seeking injunctive, declaratory, and monetary relief. The district court dismissed the case as frivolous but the appeals court affirmed in part and vacated and remanded in part. On remand, the district court denied the injunction and denied summary judgment to all parties. In denying the injunction, the court held that the prisoner was not likely to succeed on the merits of his complaint, noting that refusal to permit the center was rationally related to concerns that the group might cause security problems and that prisoners could still express grievances on an individual basis. The prisoner had asked for permission to establish a "Prisoners' Legal Defense Center" that would have three kinds of activities: (1) disseminate information to the public and the media regarding legal issues of importance to prisoners; (2) engage in "impact litigation" to prosecute lawsuits of relatively wide significance; and (3) educate the local inmate population, allowing prisoners to assemble, discuss their views and attempt to arrive at a consensus, inviting speakers, holding paralegal training classes and possibly publishing handbooks and pamphlets. Officials denied the request, stating that the Center would duplicate existing services and opportunities, and that the Center might create a significant security risk because particularly belligerent prisoners may use the Center to incite violence. (New York State Dept. of Corrections, Woodbourne Correctional Facility)

U.S. District Court
PUBLICATIONS

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement.

The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. The court denied summary judgment to the officials on the allegation that preventing inmates from accessing sexually explicit material was an exaggerated response to the officials' concerns about reducing violence and sexual assault. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
PUBLICATIONS

Spellman v. Hopper, 142 F.Supp.2d 1323 (M.D.Ala. 2000). A prison inmate brought a suit challenging a corrections department regulation which limited access to subscription publications for prisoners in administrative segregation, seeking declaratory and injunctive relief. The district court held that the subsequent amendment of the regulation, and the inmate's release from administrative segregation, did not render the case moot. The court entered declaratory judgment that the former absolute prohibition of receipt of subscription publications by inmates in segregation violated the First Amendment, and that the policy should not be implemented further. The court noted that the corrections department possessed the power to return the regulation to its original form. (Alabama Department of Corrections)

U.S. District Court
TELEPHONE

Spurlock v. Simmons, 88 F.Supp.2d 1189 (D.Kan. 2000). A deaf and mute inmate brought an action against prison officials alleging violation of his civil rights. The district court granted summary judgment in favor of the defendants, finding no due process or Americans with Disabilities Act (ADA) violations. The court held that requiring the deaf inmate, who had to use a special telecommunications device for the deaf (TDD) in a separate office, was not a significant hardship in violation of the Eighth Amendment. The court also held that the inmate had meaningful access to prison activities without the provision of an interpreter. According to the court, there was no evidence that the deaf inmate's request for unlimited telephone use--comparable to that of his hearing counterparts--could not reasonably be accommodated by the prison. (Lansing Correctional Facility, Kansas)

U.S. District Court
RETALIATION

Taylor v. Thornton, 107 F.Supp.2d 1061 (W.D.Mo. 2000). A prisoner serving a federal sentence brought a civil rights action against the director of a halfway house alleging that his return to prison from the halfway house was in retaliation for his request that his religious beliefs be accommodated. The district court entered judgment for the director, finding that the return was not in retaliation for the prisoner's request that his religious views on racial segregation be accommodated. The court found that the actions of the director were motivated by policy and law that mandated racially integrated housing, the prisoner's unwillingness to comply with the policy, and the avoidance of possible confrontations between the prisoner and other residents of the halfway house. As a member of the Aryan Nations the prisoner asserted a religious belief in racial segregation and voiced an objection to sleeping in a room with "non-Europeans." (Dismas House, Missouri)

2001

U.S. District Court
OBSCENITY
PUBLICATIONS

Broulette v. Starns, 161 F.Supp.2d 1021 (D.Ariz. 2001). A state inmate brought a § 1983 action alleging that prison officials wrongfully withheld copies of an adult magazine to which he subscribed. The district court held that the magazines were not obscene, the prison officials were not entitled to qualified immunity from liability, and that punitive damages were not warranted. The court found the magazines, *Hustler*, were not obscene, even though the court noted that taken as a whole, the magazines clearly appealed to prurient interest and depicted or described sexual activity in a patently offensive way. But the magazines could not be withheld from the inmate as obscene because they appeared to "deliberately include content" that required anyone applying the constitutional standard to conclude that it had some serious, literary, artistic, political or scientific value. The court denied qualified immunity to the prison officials because it concluded that no state prison official who objectively applied the obscenity standard could have believed that the adult magazines did not comply with the standard. But the court held that an official's refusal to deliver copies of the magazines to the inmate was not in reckless or callous disregard of the inmate's First Amendment rights, but rather that the official suffered from a lack of training and understanding of the fact that pornography and obscenity were not the same thing. The court declined to subject the official to punitive damages. (Arizona Department of Corrections)

U.S. Appeals Court
COMMUNICATION
WITH PRISONERS

Curley v. Perry, 246 F.3d 1278 (10th Cir. 2001). A state inmate brought a pro se civil rights action seeking to restrict inmate-to-inmate correspondence in the state's prison system. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed, finding that the inmate failed to state an Eighth Amendment claim. The inmate had claimed that prison officials created unconstitutional conditions of confinement by failing to prevent or monitor inmate-to-inmate correspondence, which was allegedly used by inmates to plan violence against other inmates. The court noted that the inmate had been placed in administrative segregation for his own safety, precluding a showing of requisite deliberate indifference to the inmate's health and safety. (Central New Mexico Correctional Facility)

U.S. Appeals Court
REGULATIONS

Dormire v. Wilkinson, 249 F.3d 801 (8th Cir. 2001). A prisoner brought a First Amendment challenge to a prison policy that limited the number of personal photographs that inmates could retain in their cells to five. The district court denied summary judgment for the defendants and the appeals court held that a genuine issue of fact existed as to whether the policy was reasonably related to a legitimate penological objective. (Tucker Maximum Security Unit, Arkansas)

U.S. Appeals Court
CASSETTE TAPES
MAIL

Driver v. Goose, 273 F.3d 811 (8th Cir. 2001). A state prison inmate sued to recover for the alleged violation of her constitutional rights in connection with prison officials' censorship of a music-cassette tape that she had ordered through the mail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the inmate, who was a member of a racial minority, could not recover on an equal protection theory, given the complete lack of evidence that she had been treated differently from similarly situated white inmates who had attempted to receive through the mail and uncensored, the same explicit-lyric tape that she had ordered. (Missouri)

U.S. District Court
MEDIA ACCESS

Entertainment Network, Inc. v. Lappin, 134 F.Supp.2d 1002 (S.D.Ind. 2001). An Internet content provider sued a penitentiary warden and other government officials seeking declaratory and injunctive relief. The plaintiff wanted to broadcast the execution of the defendant who had been convicted of the bombing of the federal building in Oklahoma City, live over the Internet. The district court entered judgment for the defendants. The court found that the challenged prison regulation was not subject to strict scrutiny and was reasonably related to legitimate penological interests. The challenged regulation prohibited photographic, audio and visual recording devices at federal executions. The court noted that the First Amendment right of the press to gather news and information is not without limits, and that the press has no constitutional right of access to prisons or their inmates beyond that afforded to the general public. According to the court, the plaintiff was not being discriminated against because of the medium or means by which it sought to broadcast the execution, although the regulation allowed written or verbal accounts of executions. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
MAIL
PUBLICATIONS

Prison Legal News v. Cook, 238 F.3d 1145 (9th Cir. 2001). Prisoners and the publisher of a non-profit newsletter brought a § 1983 action against corrections officials, challenging a corrections department policy that prohibited prisoners from receiving standard rate mail (also known as bulk mail), including subscriptions to non-profit organizational mail. The district court entered summary judgment for the officials and the plaintiffs appealed. The appeals court reversed and remanded, finding that the ban on the receipt of subscription non-profit organization mail implicated the First Amendment interests of both inmates and publishers. The court held that the ban was not rationally related to the department's asserted penological interests in preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections, and enhancing prison security. The appeals court found that subscription non-profit organization mail was entitled to procedural protections under the due process clause. The court noted that the speech at issue was a core protected speech, not commercial speech or speech that was objectionable on security or other grounds. (Oregon Department of Corrections)

U.S. Supreme Court
PRISONERS
COMMUNICATIONS
WITH PRISONERS

Shaw v. Murphy, 121 S.Ct. 1475 (2001). The U.S. Supreme Court reversed a federal appeals court ruling that held that inmates have a First Amendment right to give legal assistance to other prisoners. A Montana state prisoner sent a letter to a fellow inmate containing legal advice. The letter was intercepted and the inmate who sent it was sanctioned for violating prison rules that prohibited insolence and interfering with due process hearings. The appeals court ruled that a First Amendment right to provide legal advice to other prisoners should be taken into account when determining if a prison regulation that impinges on inmates' constitutional rights is valid. In a unanimous decision, the Supreme Court held that there is no such "special First Amendment right" to provide legal assistance to fellow prisoners that enhances any protections otherwise available. According to the Court, prisoners' constitutional rights are "more limited in scope" than the rights held by individuals in society at large and the Court has "generally deferred" to prison officials' judgment in upholding regulations which limit prisoners' First Amendment rights. (Montana)

U.S. District Court
RETALIATION
NEWSPAPERS

Spruytte v. Hoffner, 181 F.Supp.2d 736 (W.D.Mich. 2001). Prisoners brought an action alleging they were transferred to other facilities in retaliation for exercise of their First Amendment rights. The district court found in favor of the inmates, holding that the prisoners were subjected to adverse actions in retaliation for writing a letter to a newspaper editor. (Lakeland Corr'l Facility, Michigan)

U.S. District Court
MEDIA ACCESS

The Chicago Reader v. Sheahan, 141 F.Supp.2d 1142 (N.D.Ill. 2001). A newspaper publisher and a reporter brought a § 1983 suit against county officials, alleging First Amendment violations by refusing the reporter access to the jail in retaliation for a previously-published negative newspaper story. The district court granted summary judgment in favor of the plaintiff, finding that denying the reporter access to a legal aid program for incarcerated mothers was sufficient harm to support a retaliation claim, and that denial of access was based on the content of the reporter's prior article, in violation of the First Amendment. The court noted that a reporter might tone down a critical article if she feared that jail officials might terminate or restrict her future access. (Cook Co. Jail, Illinois)

2002

U.S. District Court
MAIL
BOOKS

Ashker v. California Dept. of Corrections, 224 F.Supp.2d 1253 (N.D.Cal. 2002). State prisoners brought a § 1983 action challenging a prison requirement that books received from vendors have a special shipping label attached, alleging violation of their First Amendment rights. The district

court granted summary judgment in favor of the prisoners and held that injunctive relief was warranted. The court held that the policy unduly burdened the prisoners' First Amendment rights, noting that the policy was not applied to non-book packages. The court also noted that the goal of reducing opportunities for contraband smuggling could be met by comparing a generic package label with an invoice inside a package, and that the prison was already searching all mail for contraband. (Security Housing Unit, Pelican Bay State Prison, California)

U.S. Appeals Court
PRISONERS

Bear v. Kautzky, 305 F.3d 802 (8th Cir. 2002). State prisoners brought a § 1983 action against prison officials, challenging a prison policy that prohibits prisoners from communicating with other prisoners who serve as jailhouse lawyers. The district court entered a preliminary injunction barring enforcement of the policy. The appeals court affirmed, finding that the prisoners demonstrated that they had suffered actual injury for the purpose of a right-of-access to court claim. The prisoners had testified that they had pending post-conviction proceedings and they did not have the knowledge or skill to pursue those claims without legal assistance, and that they were receiving or had sought such assistance from jailhouse lawyers. According to the court, a prison system may experiment with prison libraries, jailhouse lawyers, private lawyers on contract with the prison, or some combination of these and other devices, as long as there is no actual harm to the constitutional access rights of particular inmates to the courts. (Iowa State Penitentiary)

U.S. District Court
MEDIA ACCESS
NEWSPAPERS
Freedom of
Information Act

Brady-Lunny v. Massey, 185 F.Supp.2d 928 (C.D.Ill. 2002). A publisher, newspaper, and reporter brought a state-court action against a county sheriff, seeking information regarding inmates held in a county jail, pursuant to the provisions of a state Freedom of Information Act. The United States intervened to protect information about federal inmates being held at the jail and the case was moved to federal court. The district court granted summary judgment in favor of the defendants. The court held that disclosure of lists of federal inmates lists would be an unreasonable invasion of privacy because some federal inmates were "merely witnesses or detainees who had not been charged with crimes and releasing their names would stigmatize them and cause irreparable damage to their reputations." The court noted that disclosure of information could also reasonably be expected to endanger the life or physical safety of inmates considering inmates' gang ties, interest in escape, and motives for violence against informants and rivals. (DeWitt County, Illinois)

U.S. Appeals Court
MEDIA ACCESS
EXECUTIONS

California First Amendment Coalition v. Woodford, 299 F.3d 868 (9th Cir. 2002). Nonprofit organizations, whose members included journalists who attended and reported on state executions, brought an action against state prison officials, challenging a regulation that barred public viewing of lethal injection procedures prior to the actual administration of the injection. The district court granted summary judgment in favor of the plaintiffs. The appeals court reversed and remanded. On remand, the district court entered a judgment that permanently enjoined prison officials from preventing uninterrupted viewing of executions, from the moment the condemned entered the execution chamber through the time the condemned was declared dead. The state again appealed and the appeals court affirmed, finding that the public has a First Amendment right to view executions and that the prison regulation impermissibly restricted this right. (San Quentin State Prison, California)

U.S. District Court
INTERNET
MAIL

Clement v. California Dept. of Corrections, 220 F.Supp.2d 1098 (N.D.Cal. 2002). A prisoner brought a civil right action regarding his medical treatment for colon cancer, and a First Amendment claim challenging a prison mail policy that banned the inclusion of Internet-generated materials in regular mail received by prisoners. The court granted injunctive relief to the prisoner, finding that the policy of banning Internet-generated materials in regular mail violated the prisoner's First Amendment right to receive information through incoming mail. The court concluded that the policy was not rationally related to any penological interest in controlling the volume of mail, and was an arbitrary substitute for a more direct means of regulating the volume of mail. The court noted that no evidence supported the assertion that Internet-generated materials were more likely to contain coded criminal correspondence, or that such materials were any more difficult to trace than permissible anonymous mail. The court did not view transcription and summarization of Internet-produced material as a viable alternative to downloading and transmitting such materials by regular mail to prisoners who did not have access to the Internet. (Pelican Bay State Pris., Cal.)

U.S. Appeals Court
VISITS

Dewitt v. Wall, 41 Fed.Appx. 481 (1st Cir. 2002). A state prisoner brought a § 1983 action against prison officials, challenging a prison policy that prohibits former correctional employees from visiting prisoners. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the policy was rationally connected to legitimate concerns about prison security. (Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
CENSORSHIP

Duamutef v. Hollins, 297 F.3d 108 (2nd Cir. 2002). A prison inmate brought a pro se § 1983 action against prison officials alleging arbitrary censorship of his mail. The district court denied summary judgment for the officials and they appealed. The appeals court reversed and remanded, finding that prison officials had acted in pursuit of legitimate penological interests by imposing a temporary mail watch on the inmate. The mail watch was imposed after the inmate received a book with the phrase "Blood in the Streets" in its title. Even though the book was a "harmless economics book" the appeals court held that the title could easily arouse concern in the prison officials, and they could base a security decision on the title alone. The court noted that the inmate had an extensive disciplinary history involving prohibited organizational activities, and the officials' actions were limited. (Oneida Correctional Facility, New York)

U.S. District Court
RETALIATION
CRITICISM

Farid v. Goord, 200 F.Supp.2d 220 (W.D.N.Y. 2002). An inmate brought a § 1983 action against correctional officers and prison officials, alleging free speech and procedural due process violations under the First and Fourteenth Amendments. The district court granted summary judgment, in part, for the defendants. The court held that the inmate, who had circulated a petition, engaged in protected conduct even though the prison had a grievance process that could have been used. The petition concerned allegations that an officer failed to allow inmates adequate time to finish their breakfast. The court noted that no regulation barring petitions was in effect at the time. The court denied summary judgment on the issue of whether the inmate's right to petition the government and right to free speech were violated by officers when they determined, independent of the facility's media review committee, that a copy of the petition the inmate had sent to the prison superintendent was unauthorized, and that two satirical articles written by the prisoner, one of which was published by local news media, were detrimental to the order of the facility. The court denied qualified immunity to officers on the inmate's retaliation claim, finding that the inmate's right not to suffer retaliation for engaging in protected First Amendment activities was clearly established at the time of the alleged retaliation. The inmate alleged that the officers retaliated with searches of his cell and work area, and with disciplinary charges for authoring and possessing certain articles. (Attica Correctional Facility, New York)

U.S. District Court
HAIR

Gartrell v. Ashcroft, 191 F.Supp.2d 23 (D.D.C. 2002). Rastafarian and Muslim inmates, on behalf of a class of inmates whose avowed religious beliefs forbid them from cutting their hair or shaving their beards, sued District of Columbia and federal prison officials. The inmates challenged the policy of housing inmates from the District of Columbia in facilities operated by the Virginia Department of Corrections (VDOC), which had a policy that prohibited long hair and beards. The district court ruled in favor of the inmates, finding that each individual decision to place or keep an inmate in a VDOC facility was subject to scrutiny under the Religious Freedom and Restoration Act (RFRA). The court held that the inmates' sincerely held religious beliefs were substantially burdened by the VDOC policy and that the Federal Bureau of Prisons failed to demonstrate that housing the inmates in VDOC facilities was the least restrictive means of achieving their governmental interest. (Federal Bureau of Prisons and Virginia Department of Corrections)

U.S. District Court
MAIL

Gatlin Ex Rel. Gatlin v. Green, 227 F.Supp.2d 1064 (D.Minn. 2002). The estate of a cooperating witness in a murder investigation brought civil rights, civil rights conspiracy, and state law claims against a police officer and city. The witness had been murdered after police released a prisoner's letter that identified the witness. The district court granted the defendants' motion for summary judgment. The court found that there was no clearly established right at the time of the murder, that required police or jail officers to embargo or detain threatening prison mail or to protect cooperating confidential informants from retaliatory violence. The court noted that the officer who released the prisoner's letter repeatedly warned the informant and took steps to help the informant leave the state and to protect him. The court found that the city's failure to provide more training to police officers in prisoner-rights law or the regulation of jail correspondence, was inadequate to support civil rights liability for the city under a failure-to-train theory. (Carver County Jail, Minnesota)

U.S. Appeals Court
MARRIAGE
VISITS
FAMILY

Gerber v. Hickman, 291 F.3d 617 (9th Cir. 2002). A state prisoner brought a § 1983 action and state law claims against a warden, alleging violation of his constitutional right to procreate by the warden's refusal to allow the prisoner to artificially inseminate his wife. The district court dismissed the case; the appeals court reversed, vacated and remanded. On rehearing en banc, the appeals court affirmed the district court decision, finding that while the basic right to marry survives imprisonment, most of the attributes of marriage, including cohabitation, physical intimacy, sexual intercourse, and bearing and raising children, do not. The court noted that prisoners have no due process or Eighth Amendment right to contact visits or conjugal visits. The court found that a prisoner's right to marry while in prison does not include a right to consummate the marriage or to enjoy the "other tangible aspects of marital intimacy." According to the court, the prisoner's equal protection right to be free of forced surgical sterilization did not give the prisoner the right to exercise his ability to procreate while in prison. The court also found that the prisoner's equal protection rights were not violated because some prisoners were allowed to have conjugal visits, because these prisoners would eventually be released into the community, while the plaintiff would never be eligible for release. (Mule Creek State Prison, California)

U.S. Appeals Court
FREE SPEECH

Hargis v. Foster, 312 F.3d 404 (9th Cir. 2002). A state prisoner who suffered from a neurological disorder brought a § 1983 action against prison officials in their individual and official capacities, alleging violations of his First and Eighth Amendment rights. The district court granted summary judgment on one claim and dismissed the remaining claims, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that factual issues precluded summary judgment on the prisoner's free speech claim. The court ordered further proceedings to determine if officials acted unreasonably when they characterized the prisoner's statements to an officer as an attempt to coerce the officer into not enforcing a prison shaving rule. The prisoner suffered from a medical condition known as spasmodic torticollis that caused his head to twist and jerk uncontrollably. The prisoner had told an officer that he could not shave himself with a regular razor without cutting himself, and the prisoner was disciplined for violating a regulation against coercing officers. (Idaho)

U.S. District Court
ASSEMBLY
RELIGION
RELIGIOUS
LITERATURE

Marria v. Broaddus, 200 F.Supp.2d 280 (S.D.N.Y. 2002). A state prisoner brought a § 1983 action against prison officials alleging violation of the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Due Process Clause. The prisoner challenged the confiscation of certain religious materials. The district court denied summary judgment on the First Amendment and RLUIPA claims, but granted qualified immunity to the defendants on the due process claims. The court found genuine issues of material fact, precluding summary judgment, on the permissibility of the prison's ban on materials and assembly, whether the inmate had an alternative means of exercising his First Amendment rights, and whether accommodating the inmate's religious beliefs would have a deleterious impact on the administration of the prison. The prisoner was a member of the Nation of Gods and Earths ("Nation"), also referred to as the Five Percenters, Five Percent, and the Five Percent Nation. The defendants told the court that it "deems incarcerated Five Percenters an organized threat to the safety, order and security" of their prison facilities, noting that some other corrections agencies classify the Five Percenters as a gang. The court held that an expert report submitted by the prisoners was admissible, while the expert report submitted by prison officials was not admissible. The officials' report had been prepared by an expert with 40 years experience in criminal justice, but the court found it to be "misleading" and "based on unreliable methodology." The court discounted the expert's conclusions which were, according to the court, based on statistics from a questionnaire he sent to prison officials, in which he asked for help in defending the lawsuit. The court agreed with the plaintiffs' characterization of the expert's report as being "subjective and biased, and the results therefore do not bear the indicia of trustworthiness required to admit a survey into evidence." The court concluded that "because the Camp Report is misleading, unhelpful to the trier of fact, and founded on biased and therefore unreliable evidence, Camp's testimony is inadmissible." (Green Haven Corr'l Facility, New York)

U.S. Appeals Court
RETALIATION

McQuillion v. McKenzie, 35 Fed.Appx. 547 (9th Cir. 2002). A prisoner brought a § 1983 action against correctional officers, alleging harassment and retaliation due to his role as chairman of the inmate advisory council. The district court granted summary judgment in favor of the officers and the prisoner appealed. The appeals court affirmed in part, and reversed in part. The appeals court held that genuine issues of material fact, as to whether the officers filed false administrative warnings against the prisoner, precluded summary judgment. The court found that the prisoner had provided sufficient evidence to advance his allegations that he was targeted for retaliation on the basis of his participation in a constitutionally-protected activity. (California Medical Facility, Vacaville)

U.S. District Court
SOLICITING

Rodriguez v. Ames, 224 F.Supp.2d 555 (W.D.N.Y. 2002). A pro se state prisoner brought a suit against state corrections officials and employees, alleging violations of § 1983. The district court granted partial summary judgment for the defendants. The court held that a prison directive that prohibited prisoners from soliciting did not violate the prisoner's First Amendment rights because there was a rational connection between the directive and a legitimate governmental interest in prison security, and where there were no alternative avenues that would allow the prisoner to exercise his rights. The court found that the prisoner's Sixth Amendment right to privacy while speaking to an attorney was not violated by the presence of a corrections counselor for the duration of the call. The prisoner was attempting to secure legal representation for a potential § 1983 action and the court found that the prisoner failed to show any harm that resulted from the presence of the counselor. (Auburn Correctional Facility, New York)

U.S. Appeals Court
PUBLICATIONS
INTERNET

Rogers v. Morris, 34 Fed.Appx. 481 (7th Cir. 2002). A state prisoner brought a § 1983 action alleging that prison regulations violated his First Amendment rights. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that prison regulations banning pornography and material that teaches or advocates behavior consistent with a gang did not violate the prisoner's First Amendment rights. Under the regulation, prison officials had withheld various magazines devoted to hip-hop music and culture, and certain "internet materials" sent to him by mail. (Wisconsin)

U.S. District Court
MAIL
TELEPHONE

Simpson v. Gallant, 223 F.Supp.2d 286 (D.Me. 2002). A pretrial detainee filed a §1983 action alleging his constitutional rights were violated when county jail officials denied him access to telephone and mail services. The district court granted summary judgment in favor of the defendants. The court held that the refusal to permit the pretrial detainee access to a telephone to arrange bail, after he was placed in disciplinary segregation for violations of jail rules, did not violate the detainee's Fourteenth Amendment rights, where the detainee retained the ability to use the mail and to meet with his attorney. (Penobscot County Jail, Maine)

U.S. Appeals Court
PUBLICATIONS

Sorrels v. McKee, 290 F.3d 965 (9th Cir. 2002). A state prisoner brought a § 1983 action against prison officials, alleging that enforcement of a prison policy that prohibits a prisoner from receiving publications as a gift violated his First Amendment and due process rights. The district court granted summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the officials were entitled to qualified immunity because the unconstitutionality of the ban on gift publications had not been established at the time of their actions. In an earlier decision (Crofton v. Roe, 170 F.3d 957), the appeals court had found the policy unconstitutional and the state corrections department subsequently changed the policy. (Airway Heights Corrections Center, Washington)

U.S. District Court
INSPECTION OF MAIL
TELEPHONE
VISITATION

U.S. v. Flores, 214 F.Supp.2d 1193 (D.Utah 2002). A prisoner who was indicted for alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violations, filed a writ of habeas corpus challenging restrictions placed on his conditions of confinement. The district court denied the petition. The court held that the secure confinement of the prisoner was justified and that restrictions placed upon his confinement were warranted because the prisoner was a flight risk, and a danger to others. The court upheld restrictions on the prisoner's mail that required mail to be read for threats, conspiracy, or obstruction of justice efforts, because members of the prisoner's gang outside the prison could act on his instructions. The court also upheld that the limitation of one visitor per day and telephone restrictions. The court clarified that the prisoner's right of access to counsel included investigators or other special assistants working for the prisoner's attorney. (Utah State Prison)

U.S. Appeals Court
TELEPHONE

Valdez v. Rosenbaum, 302 F.3d 1039 (9th Cir. 2002). A pretrial detainee brought a civil rights action against a federal prosecutor and jail officials alleging that his constitutional rights were violated during his detention in a state-operated jail, as the result of restrictions placed upon his telephone access. The district court entered summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed, finding that a state law that allowed prisoners reasonable access to the telephone did not give the pretrial detainee a liberty interest in telephone usage. The appeals court held that telephone restrictions did not violate the detainee's due process rights nor the First Amendment, and that the detainee could not maintain a Sixth Amendment claim based on the telephone restrictions. The court noted that the restrictions, which limited the detainee's telephone access to calls to his attorney only, were reasonably related to the legitimate government interest of ensuring the safety of police officers when they were executing arrests, and preventing the detainee from helping his co-conspirators elude arrest. The court noted that the detainee was allowed to receive visitors and could send and receive mail, but allowing the detainee phone access would have required jail staff to monitor his calls, and there was no obvious, easy alternative to the restriction. (Alaska Cook Inlet Pretrial Facility)

U.S. District Court
RETALIATION

Wicks v. Shields, 181 F.Supp.2d 423 (E.D.Pa. 2002). A prisoner sued corrections officials challenging his termination as an employee of a legal clinic, restrictions on his private use of the clinic and restrictions on his mail privileges. The district court granted summary judgment to the defendants. The prisoner had asserted that the actions were taken in retaliation for his efforts to report alleged physical abuse of other prisoners. The court found that the actions were not retaliatory. According to the court, the prisoner was fired from his job in the legal clinic for misusing his position when he sent a large volume of mail to a public defenders association. The restrictions on the prisoner's mail privileges applied only to free mail and did not affect mail that the prisoner paid for himself. After termination from his job in the legal clinic, he was allowed to use the clinic during the times allocated for his cellblock. (State Correctional Institution in Somerset, Pennsylvania)

U.S. Appeals Court
MOVIES
CENSORSHIP

Wolf v. Ashcroft, 297 F.3d 305 (3rd Cir. 2002). Federal prisoners brought a class action challenging a prison policy that prevented prisoners from viewing movies with a rating of "restricted" or higher. The district court entered judgment on the pleadings in favor of the government. The appeals court reversed and remanded. The appeals court held that the district court did not conduct a "proper, thorough analysis" under *Turner v. Safley* because it did not articulate a relevant penological interest or the prohibition's relationship to it, and considered only the first prong of *Turner*. The appeals court held that the district court should not have relied on "common sense" in determining whether the first prong was satisfied, noting that whether the requisite connection may be found solely on the basis of common sense depends on the nature of the right, the nature of the interest asserted, the nature of the prohibition, and the obviousness of the connection to the interest. The district court had concluded that the policy was neutral and was reasonably and rationally related to a legitimate penological interest. (Federal Bureau of Prisons)

2003

U.S. Appeals Court
BOOKS
PUBLICATIONS
MAIL

Ashker v. California Dept. of Corrections, 350 F.3d 917 (9th Cir. 2003). A state prisoner brought a § 1983 action challenging a prison policy that requires books and magazines mailed to a prison to have approved vendor labels affixed to them. The district court granted summary judgment in favor of the prisoner and issued a permanent injunction against the defendants. The appeals court affirmed, finding that the policy was not rationally related to the prison's asserted interest in security and order, and therefore violated the prisoner's First Amendment rights. The court noted that the prison already required that books be sent directly from approved vendors, allowing officials to reduce contraband smuggling by checking address labels and invoices, and that the prison was still searching all mail for contraband. The court also noted that the policy was not applied to non-book packages. (Security Housing Unit, Pelican Bay State Prison, California)

U.S. District Court
INTERNET
MAIL

Canadian Coalition Against Death Penalty v. Ryan, 269 F.Supp.2d 1199 (D.Ariz. 2003). A prisoner rights advocacy group that maintained Internet websites brought an action seeking a declaration that a state statute that prohibited prison inmates from sending mail to, or receiving mail from, a communication service provider or from having access to the Internet through a provider, was unconstitutional. The district court held that the plaintiffs had standing to challenge the statute, and that the statute was not rationally related to legitimate penological objectives, and was therefore unconstitutional. The court noted that the actual enforcement of the statute was directed

at prisoners, and that existing regulations and statutes already precluded the targeted conduct. (Arizona Department of Corrections)

- U.S. District Court
NAME
- Ephraim v. Angelone, 313 F.Supp.2d 569 (E.D.Va. 2003). A state prison inmate who was a Charismatic Christian brought a suit claiming that a prison violated his constitutional rights by failing to use his new religiously-inspired name and to honor his dietary requests. The district court entered judgment in favor of the prison. The court held that the inmate's equal protection rights were not violated when he was denied a vegetarian diet his religion allegedly required, because there were no other members of his religion in his prison that were treated differently, nor was there any showing of intentional discrimination. The court found that the strict scrutiny test set forth in the Religious Land Use and Institutionalized Persons Act (RLUIPA) was not required because there was no showing that the prison was receiving federal funding, or that the burden imposed on the inmate affected interstate commerce. The court held that the prison did not violate the free exercise of religion rights of the inmate by continuing to use the name under which he was committed when preparing money orders and on official documents. The court noted that prison computers were programmed with the commitment name and the prison's unwillingness to change programs to allow for the name substitution furthered a legitimate interest in holding down costs. (Lunenburg Correctional Center, Virginia)
- U.S. District Court
FREE SPEECH
RETALIATION
- Forchion v. Intensive Supervised Parole, 240 F.Supp.2d 302 (D.N.J. 2003). A prisoner brought a civil rights action alleging that his removal from a state intensive supervision parole program was motivated by his protected conduct in advocating for the legalization of marijuana, in violation of his First Amendment rights. The district court granted a preliminary injunction, reinstating the prisoner in the release program pending determination of his claim. The court found that the prisoner's conduct while participating in the release program,-- speaking to the press, protesting and handing out pamphlets outside of a courthouse, running a website, and producing and appearing in television commercials, all in favor of legalization of marijuana-- was conduct that was protected by the First Amendment. (Burlington County Jail, New Jersey)
- U.S. District Court
MEDIA ACCESS
- Kimberlin v. Quinlan, 251 F.Supp.2d 47 (D.D.C. 2003). An inmate sued the director of the federal Bureau of Prisons and the chief of public affairs of the U.S. Department of Justice, claiming violation of his First Amendment rights when he was placed in administrative detention to prevent a pre-election press conference on his claim of having sold marijuana to vice presidential candidate Dan Quayle. The case was eventually heard by the United States Supreme Court and was remanded to the district court, which denied summary judgment for the defendants. The defendants appealed and the appeals court affirmed in part and remanded to the district court for determination of the intent of the officials. The district court denied summary judgment for the defendants, finding it was precluded by material issues of fact as to whether the officials intended to interfere with the inmate's access to the press when they arranged for his placement in administrative detention, preventing him from holding a pre-election press conference. (Federal Correctional Institution at El Reno, Oklahoma)
- U.S. Appeals Court
MUSIC
FREE SPEECH
- Kimberlin v. U.S. Dept. of Justice, 318 F.3d 228 (D.C.Cir. 2003). Prison inmates brought an action against the federal Bureau of Prisons (BOP) alleging that the BOP's ban on electric or electronic musical instruments, except those used in connection with religious activities, violated their constitutional rights to free expression and equal protection. The district court held that the policy did not violate the First Amendment, but entered summary judgment in favor of the inmates on their equal protection claim. The inmates appealed and the appeals court affirmed. The appeals court held that the BOP reasonably interpreted a statute that banned the use of appropriated funds for the "use or possession" of electric or electronic musical instruments, as a prohibition against the possession of such instruments. The court noted that even if the inmates' rights of free expression were implicated by the BOP regulation, it did not impermissibly infringe on those rights because it was reasonably related to the legitimate interest in conserving correctional funds, and inmates have access to alternatives such as voice and acoustic instruments. (Federal Correctional Institution at Cumberland, Maryland)
- U.S. Appeals Court
OBSCENITY
PUBLICATIONS
- Krug v. Lutz, 329 F.3d 692 (9th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials, alleging a procedural due process violation in connection with the review of decisions that excluded incoming publications as obscene. The district court found that the officials enjoyed qualified immunity, but granted injunctive relief for the inmate. The district court ordered a review by a different decision-maker when a publication was excluded, if the exclusion was challenged. The officials and inmate appealed. The appeals court affirmed. The appeals court held that the inmate had a protected liberty interest in the receipt of his subscription mailings and therefore had a constitutional right to a two-level review of a corrections official's determination that a publication was excludable as obscene. The court noted that a different official from the one who made the initial determination had to review the challenge to the exclusion. (Arizona Department of Corrections)
- U.S. District Court
FOIA- Freedom of Infor-
mation Act
- Maydak v. U.S. Dept. of Justice, 254 F.Supp.2d 23 (D.D.C. 2003). A prisoner sought the release, under the Freedom of Information Act (FOIA), of copies of law enforcement and prison records. The district court granted summary judgment for the government and the prisoner appealed. The appeals court held that the Bureau of Prisons (BOP) specifically exempted its systems of inmate records from the access provisions of the disclosure accounting requirement of the Privacy Act, as it

was permitted to do. The court ruled that the BOP was justified in withholding records related solely to its internal personnel rules and practices, but not portions of staff manuals or staff statements about internal matters. The court held that the BOP failed to establish that certain requested information came under the FOIA exemption for information contained in personnel and medical files, and that the adequacy of its records search or that entire records were exempt from disclosure. (U.S. Department of Justice, Bureau of Prisons)

U.S. Appeals Court
FORMER PRISONER
MAIL

Nasir v. Morgan, 350 F.3d 366 (3rd Cir. 2003). A state inmate brought a § 1983 action against prison employees, alleging that they violated the First Amendment by banning correspondence between the inmate and a former prisoner, and violated the former prisoner's due process rights by failing to inform him of the ban on correspondence. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the prohibition on correspondence between inmates and former inmates did not violate the First Amendment, as applied to incoming mail and outgoing mail. The court noted that the regulation did not bar all forms of correspondence, leaving ample alternative means to communicate open to the inmates. (State Correctional Institution at Greensburg, Pennsylvania)

U.S. Appeals Court
MARRIAGE

Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003). A parolee brought a § 1983 action challenging a ban on international travel, alleging it violated his right to travel and to marry. The district court dismissed the case for failure to state a claim and the parolee appealed. The appeals court affirmed, finding that the parole condition that absolutely barred parolees from traveling internationally throughout the term of their parole, did not violate any constitutionally-protected right to travel or to marry that the parolee possessed. (Wisconsin Department of Justice)

2004

U.S. Appeals Court
RETALIATION

Allen v. Thomas, 388 F.3d 147 (5th Cir. 2004). A state prisoner whose property was confiscated brought a § 1983 action against correctional officers. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that confiscation of the prisoner's long-held word processor, which allegedly occurred shortly after he submitted letters that were critical of the prison to a mail room for mailing, was sufficient to state a claim of retaliation for his exercise of his First Amendment rights. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
MAIL
PUBLICATIONS

Bahrampour v. Lampert, 356 F.3d 969 (9th Cir. 2004). A state prisoner sued prison officials under § 1983, challenging a prison regulation that prohibited prisoners from receiving certain types of publications. The district court granted summary judgment in favor of the prison officials and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The appeals court held that the state regulation that prohibited prisoners from receiving sexually explicit materials, and a regulation that prohibited the receipt of "role playing" materials, were related to legitimate penological interests and were not vague or overly broad. The regulations were found to be neutral because they targeted the effect of certain types of materials. The court found that a body-building magazine received by the prisoner contained prohibited sexually explicit material, including an advertisement for a video depicting "Painful Erotic Domination." According to the court, the role-playing prohibition was intended to prevent prisoners from placing themselves in fantasy roles that reduced accountability and substituted raw power for legitimate authority. The court noted that such games often contained dice, which were prohibited gambling paraphernalia. The appeals court found that state prison officials were entitled to qualified immunity on the prisoner's claim that a regulation prohibiting materials by bulk mail was unconstitutional. Although an appeals court established that the prohibition of commercial bulk mail was unconstitutional, the officials could not be expected to have known this at the time of the incidents. Officials had rejected the inmate's receipt of a Green Lantern comic book because it was delivered by bulk mail. (Snake River Correctional Institution, Oregon)

U.S. District Court
CONVERSATION
CRITICISM

Cassels v. Stalder, 342 F.Supp.2d 555 (M.D.La. 2004). A state prison inmate brought an action claiming that his conviction under a prison rule barring the spread of rumors violated his constitutional rights. The district court entered judgment in favor of the inmate. The court held that the rule was constitutionally vague, where the word "rumor" was so vague that no inmate of ordinary intelligence would know what speech was prohibited. The inmate had been convicted for informing his mother that he had lost a claim for medical treatment. The mother then advertised over the Internet for legal assistance to help the inmate further prosecute his claim. According to the court, the inmate had no warning from the rule that reading her the text of his claim over the phone would result in conviction for spreading a rumor. The court noted that a prohibition of spreading of rumors could well prohibit the flow of information necessary to obtain legal counsel. (Louisiana State Penitentiary, Angola)

U.S. Appeals Court
INTERNET
MAIL

Clement v. California Dept. of Corrections, 364 F.3d 1148 (9th Cir. 2004). A state inmate brought a § 1983 action, alleging that a regulation prohibiting inmates from receiving mail that contained material downloaded from the Internet violated his First Amendment rights. The district court granted summary judgment for the inmate and issued a permanent, statewide injunction against enforcement of the Internet mail policy. The state corrections department appealed, and the appeals court affirmed. The appeals court held that the regulation violated the First Amendment and that a statewide injunction was appropriate. The court found that the regulation was an

arbitrary way to achieve a reduction in the volume of mail, and that the corrections department did not support its assertion that coded messages were more likely to be inserted into Internet-generated materials than into word-processed documents. The court noted that the origin of printed electronic mail was usually easier to trace than that of handwritten or typed mail. The court held that entering a statewide injunction barring enforcement of the policy was consistent with the provisions of the Prison Litigation Reform Act, where evidence showed that at least eight state prisons had adopted virtually identical policies and other prisons were considering it. The court held that the injunction was no broader than necessary to remedy the First Amendment violations. (Pelican Bay State Prison, California)

U.S. District Court
BOOKS
OBSCENITY

Cline v. Fox, 319 F.Supp.2d 685 (N.D.W.Va. 2004). A federal district court determined that a West Virginia Department of Corrections policy that prohibits inmates from receiving or possessing obscene material was not unconstitutional as it was applied to the inmate. The inmate then alleged that the policy on its face violated the First and Fourteenth Amendments because it was used to purge the prison library of certain books. The district court held that the inmate had standing to challenge the policy, and that the policy was not reasonably related to a legitimate penological interest in promoting security, preventing sexual assaults, and furthering rehabilitation. The court ordered the prison to amend its publication policy and screen purged books under the revised policy before restoring them to library shelves. According to the court, the policy did not define explicit sexual activity in terms of its capacity to sexually arouse. The court noted that the policy prohibited material that contained even one depiction of sexual intercourse, regardless of its context, while it allowed certain commercial pornography. (St. Mary's Correctional Center, West Virginia)

U.S. Appeals Court
STAFF

Cygan v. Wisconsin Dept. of Corrections, 388 F.3d 1092 (7th Cir. 2004). A former correctional officer at a maximum security prison filed a § 1983 action alleging they violated her constitutional rights by terminating her in retaliation for exercising her First Amendment rights. The district court granted summary judgment in favor of the defendants and the officer appealed. The appeals court affirmed. The court held that the officer raised a matter of public concern when she expressed disagreement with the decision to start a second-shift meal with fewer than ten officers, because it touched on issues of internal prison security, even though she could accurately be characterized as a disgruntled employee and her speech may have been partly motivated by her dissatisfaction with the prison. But the court found that the potential disruptiveness of the officer's speech during that meal outweighed whatever First Amendment value the speech might have had. The court noted that the officer had complained in a loud, profane and unprofessional manner and in the presence of staff and inmates, endangering both groups by exposing them to opportunistic acts of violence and undermining the authority of her supervising officer in the presence of other officers and inmates. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
PRETRIAL
DETAINEES
PRIVACY

Demery v. Arpaio, 378 F.3d 1020 (9th Cir. 2004). Pretrial detainees brought an action seeking a preliminary injunction to prevent a county sheriff from continuing to use world-wide web cameras, or "webcams," to broadcast live images of the pretrial detainees on the Internet. The district court granted the request for an injunction and the sheriff appealed. The appeals court affirmed, finding that the use of webcams constituted punishment prior to adjudication of guilt, in violation of the due process clause. According to the court, the detainees were harmed by having every moment of their daily activities exposed to general and world-wide scrutiny, notwithstanding the sheriff's claim that the webcams served purposes of deterrence and public scrutiny. The appeals court held that the grant of the injunction did not violate the sheriff's First Amendment free speech rights, where the webcam transmissions were not the sheriff's personal communications, but rather constituted governmental speech since the sheriff could not have obtained or transmitted the images absent his official position. The court noted that improving jail security was not a legitimate alternative purpose for the webcams. (Maricopa County Madison Street Jail, Arizona)

U.S. Appeals Court
RETALIATION
RELIGION

Freeman v. Texas Dept. of Criminal Justice, 369 F.3d 854 (5th Cir. 2004). Inmates brought a class action alleging that the Texas Department of Criminal Justice (TDCJ) failed to provide them with adequate opportunities to practice their faith, in violation of the Free Exercise and Equal Protection Clauses of the constitution. The district court entered summary judgment in favor of TDCJ and the inmates appealed. The appeals court affirmed, finding that the prison policy under which inmates belonging to a certain church could attend weekly services with a "Christian/non-Roman Catholic" sub-group did not violate the inmates' free exercise rights. According to the court, the policy that identified five "major faith sub-groups" was neutral, was rationally related to staff, space and financial concerns, was reasonable, and the inmates had alternative means of exercising their religions such as attending supplemental services conducted by volunteers from their faith. The court also held that the policy did not violate the inmates' equal protection rights. (Texas Department of Criminal Justice, Price Daniel Unit, Snyder, Texas)

U.S. Appeals Court
RETALIATION

Hale v. Scott, 371 F.3d 917 (7th Cir. 2004). A state inmate filed a § 1983 action alleging retaliation for exercise of his First Amendment rights, for exercising his right of access to court, and for helping others exercise their right of access of courts. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the inmate's allegation in his grievance that a prison officer was rumored to have engaged in sexual misconduct with other officers was libelous and unprivileged. (Illinois)

U.S. Appeals Court
PUBLICATIONS
CENSORSHIP

Jacklovich v. Simmons, 392 F.3d 420 (10th Cir. 2004). State prison inmates and a nonprofit publisher of a prison legal newspaper brought a § 1983 First Amendment and due process action against state corrections officials, challenging a ban on the receipt of gift publications or subscriptions, a dollar limit on publication purchases, and a complete ban on some inmates' receipt of publications. The district court granted summary judgment in favor of the defendants and the plaintiffs appealed. The appeals court reversed. The court held that summary judgment was precluded by fact issues as to whether there was a valid and rational connection between the restrictions and the asserted legitimate government interests of security and behavior management. The court noted that expert testimony concluded that the limitations served no legitimate purpose, no behavioral justification was demonstrated for the complete ban for some inmates, no link was drawn between the dollar limit and the increased payment of restitution or other obligations, and a weak link was drawn between gift subscriptions and a "strong arming" security risk. The court held that the publisher was entitled to notice and an opportunity to be heard when its publication was rejected for delivery to inmate subscribers. The court also found fact questions as to alternative means of exercising the inmates' rights, the effect of accommodation, and the absence of ready alternatives to the regulation. The prison regulations: (1) provide a \$30 per month limit on outgoing inmate funds for books, newspapers and periodicals, subject to exceeding the limit once every three months for a newspaper subscription; (2) require all inmate purchases of books, newspapers and periodicals be made by special purchase order through the institution, thereby prohibiting gift subscriptions; and (3) subject all books, newspapers and periodicals to censorship, with notice to the inmate but not the sender. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
MAIL
CENSORSHIP

Koutnik v. Brown, 351 F.Supp.2d 871 (W.D.Wis. 2004). A state prisoner sued prison officials under § 1983 alleging that they violated his First and Fourteenth Amendment rights by refusing to deliver his outgoing letter and disciplining him for writing it. The district court granted the prisoner permission to proceed in forma pauperis, but only with his claim against a prison captain. The court held that the captain's alleged refusal to send a letter from the inmate, whose contents were not gang-related and did not advocate violence or other disruptive behavior, and that the captain disciplined him for sending the letter, were sufficient to state a claim for violation of his free speech rights. (Wisconsin Secure Program Facility, Boscobel, Wisconsin)

U.S. Appeals Court
"PUBLISHER ONLY"
RULE
CLIPPINGS
MAIL

Lindell v. Frank, 377 F.3d 655 (7th Cir. 2004). A prisoner brought an in forma pauperis civil rights suit against state prison officials, alleging numerous constitutional violations and seeking injunctive, declaratory and monetary relief. The district court dismissed some claims, entered summary judgment in favor of the defendants on other claims, and granted injunctive relief to the prisoner on the one remaining claim. The prisoner and the defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that a general ban on the receipt of clippings from noncommercial sources violated the prisoner's First Amendment right to receive information, but that the district court injunction was overly broad and violated the Prison Litigation Reform Act (PLRA.) The state prison had applied a general policy, that banned the receipt of publications from noncommercial sources, to the prisoner's receipt of magazine clippings and photocopies of clippings. According to the appeals court, the injunction should have been limited to the receipt of clippings by the litigating prisoner, but the injunction improperly prevented the prison from banning any photocopies rather than just photocopies from published sources. (Wisconsin Secure Program Facility)

U.S. Appeals Court
TELEPHONE

Lynch v. Leis, 382 F.3d 642 (6th Cir. 2004). A detainee joined a class action that challenged a county policy that allowed prisoners to make only collect telephone calls, which in combination with the public defender's policy of refusing collect calls operated to deny pretrial detainees their right to counsel. The district court found a Sixth Amendment violation of the pretrial detainees' rights and ordered an injunction. The county complied with the injunction. The district court awarded attorney fees to the detainee and the defendants appealed. The appeals court reversed, finding that the detainee lacked the standing to join the class action suit and thus was not entitled to attorney fees. (Hamilton County Justice Center, Ohio)

U.S. Appeals Court
PRIVACY
VISITS

Maydak v. U.S., 363 F.3d 512 (D.C.Cir. 2004). Inmates brought an action against the federal Bureau of Prisons (BOP) alleging that the BOP violated the Privacy Act and the statute that established Inmate Trust Funds by maintaining secret file photographs of inmates and their visitors. The district court entered judgment in favor of the BOP and the inmates appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the BOP's maintenance of copies of the photos was permitted by the Privacy Act, but only to the extent that it was pertinent to an authorized law enforcement activity. The photos were taken as part of an "Inmate Photography Program" that offered inmates and their visitors the opportunity to purchase photos taken of them during visits. Inmates paid \$1 for each photo, which was deposited in the Inmate Trust Fund, which consists of money spent by inmates at prison commissaries and other Trust Fund programs. The Fund paid for cameras, film, processing and administrative costs associated with the program. The BOP had been obtaining a second set of prints of the photos and secretly keeping them for examination and future reference. The inmates discovered the practice when they obtained documents from a photo developer that indicated that duplicate prints were made, but only one print was given to the inmates. The court held that a genuine issue of material act, precluding summary judgment, existed as to whether the duplicate photographs were a "system of records" within the meaning of the Privacy Act. The court held that the BOP's use of

monies from the Inmate Trust Fund to obtain a second set of prints violated the statute that created the fund, even though in some instances there was no extra charge for the second set of prints. The court noted that when an agency compiles information about individuals for investigative purposes, Privacy Act concerns "are at their zenith," and if there is evidence of even a few retrievals of information keyed to personal identifiers, it may be a violation of the Privacy Act. (Federal Bureau of Prisons)

U.S. Appeals Court
VOTING

Muntaqim v. Coombe, 366 F.3d 102 (2nd Cir. 2004). A convicted felon imprisoned in New York brought a pro se complaint alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted summary judgment for the defendants and the felon appealed. The appeals court affirmed, finding that the Voting Rights Act did not apply to the New York statute that disenfranchised currently incarcerated felons and parolees. (Shawagunk Correctional Facility, New York)

U.S. Appeals Court
OBSCENITY

Murphy v. Missouri Dept. of Corrections, 372 F.3d 979 (8th Cir. 2004). A prisoner brought an action under § 1983 and under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he was improperly denied privileges that were given to other religious groups, including communal worship, religions funding and institutional TV air time for religious videos. The group held as a central tenet the belief that its members must all be Caucasian because they were uniquely blessed by God and must separate themselves from all non-Caucasian persons. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the defendants did not violate the prisoner's First Amendment free-exercise rights when they refused to grant his religious group the accommodation of group worship rights. The court also held that the defendants did not violate the Establishment Clause by allowing other religious groups to present programs on the religious channel of the prison television network and refusing to show programs of the prisoner's religious group. The court found that a genuine issue of material fact, as to whether the prison censorship policy violated the prisoner's First Amendment right to free speech, precluded summary judgment. The prison refused to deliver a publication that was mailed to the prisoner by the religious group to which the prisoner belonged, but the court noted that the group did not appear to counsel violence. (Crossroads Correctional Center, Missouri)

U.S. District Court
VISITS

Odenwalt v. Gillis, 327 F.Supp.2d 502 (M.D.Pa. 2004). A convicted sex offender filed a federal civil rights action alleging that state correctional officials had violated his constitutional rights by denying him contact visits with his minor children. The district court dismissed the action, finding that the offender's Eighth or Fourteenth Amendment rights were not violated. The court held that the no-contact regulation was supported by legitimate penological interests, and non-contact visits were offered as an alternative. According to the court, accommodating the request would have impaired prison officials' ability to protect children on the premises, and there was no ready alternative that did not impose significant costs on the prison. (State Correctional Institution, Camp Hill, Pennsylvania)

U.S. Appeals Court
LANGUAGE

Ortiz v. Fort Dodge Correctional Facility, 368 F.3d 1024 (8th Cir. 2004). A state prisoner sued a prison and a unit manager, challenging a policy that prohibited him from writing letters to family members in Spanish. The district court entered judgment in favor of the prison and the unit manager, and the inmate appealed. The appeals court affirmed, holding that the policy was reasonably related to the state's interest in preventing prisoners from using a language officials could not decipher to plan an escape or to smuggle contraband into the prison. The court noted that the prisoner had other avenues for communicating with his family, and the prisoner had failed to identify cost-free ways that the prison could interpret letters written in Spanish. (Fort Dodge Correctional Facility, Iowa)

U.S. District Court
PRISONERS

Purkey v. CCA Detention Center, 339 F.Supp.2d 1145 (D.Kan. 2004). A federal prisoner brought a *Bivens* action against private prison employees. The district court denied the defendants' motion to dismiss. The district court held that employees at a private company under contract to house federal pretrial detainees were "federal actors" for the purposes of potential *Bivens* liability, since the detainees were in the custody of the United States Marshal and held under the authority of the United States pending disposition of federal charges against them. According to the court, the prisoner sufficiently stated that he was prejudiced by the employee's destruction of his legal papers, for the purpose of his claim under *Bivens* that he was denied access to court. The court also found that the prisoner stated a claim for violation of his free speech and association rights. The court noted that prisoners incarcerated at prisons under contract to the federal government enjoyed the same constitutional protections as those inmates incarcerated at prisons that are actually run by the federal government. The court held that the prisoner was prejudiced by the employee's destruction of his legal papers because the papers contained written recollections of police interrogations shortly after they were conducted and also recounted representations that were made to him to elicit his cooperation in return for a lighter sentence. The court found that the prisoner stated a *Bivens* claim by alleging that employees disciplined him because he assisted other inmates in the preparation of grievances against the prisoner. According to the prisoner, the prison did not provide a law library and an attorney employed by the prison to answer legal research requests refused requests for assistance in preparing legal actions against the prison and its personnel. The prisoner alleged that employees harassed and threatened him, placed him in

segregation, entered his cell and scattered his papers and belongings, denied him visits with his wife, and confiscated his legal materials because he filed grievances. (Corrections Corporation of America, Leavenworth, Kansas)

U.S. Appeals Court
EXECUTIONS

Rice v. Kempker, 374 F.3d 675 (8th Cir. 2004). A religious organization and its members brought a suit challenging a state corrections policy that barred videotaping or recording of executions. The district court granted summary judgment to the defendants and the plaintiffs appealed. The appeals court affirmed, finding that the case was not rendered moot by the execution of the prisoner because it involved matters capable of repetition. The court held that the media policy was a valid, content-neutral time, place and manner restriction and did not violate the First Amendment right of public access. The court noted that the policy permitted media witnesses to take paper, pencil and a sketch pad to the witness area. (Missouri Department of Corrections, and New Life Evangelistic Center, Inc.)

U.S. District Court
LITERATURE

Smith v. Carrasco, 334 F.Supp.2d 1094 (N.D.Ind. 2004). A state prison inmate brought a § 1983 action alleging that corrections officials violated his constitutional rights by confiscating his anarchist pamphlets. The district court held that the allegation that officers confiscated his pamphlets was sufficient to state First Amendment and equal protection claims, but the allegations failed to state a claim of cruel and unusual punishment. According to the court, even if the confiscation meant that the inmate was unable to finish writing his book, any injury was not sufficiently serious to constitute a too-rigorous condition of confinement. The court noted that the inmate could not seek damages for mental or emotional injury because he did not suffer any actual physical injury. The court held that there were adequate remedies under state law for the alleged illegal deprivation of property. (Maximum Control Facility, Indiana)

U.S. District Court
PUBLICATIONS
“PUBLISHER-ONLY”
RULE

Waterman v. Commandant, U.S. Disciplinary Barracks, 337 F.Supp.2d 1237 (D.Kan. 2004). A military prisoner brought an action challenging the policy that allows mail room personnel to reject incoming mail that contains photocopies of publications or materials that do not come directly from a publisher or commercial vendor. The court upheld the policy, finding that it was rationally related to the goal of promoting prison security and therefore did not violate the prisoner’s First Amendment free speech rights. But the court found that it was improper for the prison to reject a legal newsletter on the ground that it contained an advertisement for the illegal exchange of stamps for currency. The court noted that the advertisement did not instruct an inmate to send in postage stamps in exchange for currency, but rather instructed the inmate to send a self-addressed stamped envelope to obtain details and an application. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

2005

U.S. Appeals Court
NEWSPAPERS
PUBLICATIONS
PHOTOGRAPHS

Banks v. Beard, 399 F.3d 134 (3rd Cir. 2005). A state inmate brought a free speech challenge to a state corrections policy on behalf of himself and other similarly situated inmates. The policy restricted access to newspapers, magazines, and photographs by inmates who are placed in a prison’s long-term segregation unit. The district court granted summary judgment in favor of the state and the inmate appealed. The appeals court reversed and remanded, finding that a valid, rational connection did not exist between the policy and a stated rehabilitation objective, nor prison security concerns. The court noted that confinement in the unit was not based on a specific rule infraction or for a specific duration, and that an inmate could remain in the unit under the publication ban indefinitely. According to the court, there was no evidence that inmates misused periodicals or photographs in ways described by corrections officials, such as to fuel fires or as crude weapons. There was no evidence regarding the effect of the ban on the frequency of fires, and inmates were permitted to possess other items that could be used for the purposes that were supposedly targeted by the policy. The court noted that inmates had no alternative means to exercise their First Amendment right of access to a reasonable amount of newspapers, magazines and photographs. The court described alternative policies, such as establishing reading periods in which periodicals could be delivered to inmates’ cells and later collected, establishing a limit on the number of photographs that an inmate could have in his cell at one time, or escorting inmates to a secure mini-law library to read periodicals of their choosing. The policy bans all newspapers and magazines from a publisher or prison library, or from any source, unless the publication is religious or legal in nature. (State Correctional Institution at Pittsburgh, Pennsylvania)

U.S. Appeals Court
VISITATION

Bazzetta v. McGinnis, 423 F.3d 557 (6th Cir. 2005). A class of state prisoners challenged restrictions on visitation. The district court entered judgment for the plaintiffs and the appeals court affirmed. The U.S. Supreme Court reversed and remanded. On remand, the district court declined to dissolve its injunctive order of compliance and the state corrections department appealed. The appeals court reversed and remanded, finding that the department regulation that restricted visitation did not, on its face, violate procedural due process. The court noted that prisoners do not have a protected liberty interest in visitation. The regulation indefinitely precluded visitation from persons other than attorneys or clergy for prisoner with two or more substance abuse violations. The appeals court opened its decision by stating “This case marks

another chapter in a ten-year controversy between incarcerated felons, their visitors, and the Michigan Department of Corrections.” (Michigan Department of Corrections)

U.S. District Court
RELIGION

Brown Ex Rel. Indigenous Inmates v. Schuetzle, 368 F.Supp.2d 1009 (D.N.D. 2005). Native American inmates at a state prison brought a civil rights action alleging they were being deprived of their right to freely exercise their religion. The district court dismissed the action. The court held that the prison’s failure to hire or appoint an individual that met a chief’s requirements for conducting sacred sweat lodge ceremonies did not violate the inmates’ civil rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court noted that a prison is not under an affirmative duty to hire a particular clergy person, and that an appropriate solution can include rotating different clergy in an effort to cater to all sects. According to the court, the chief’s statement of protocols for the seven sacred rites was a statement of goals, and the failure to appoint a specific pipe keeper did not impose a substantial burden on the inmates’ exercise of their religious freedoms. The court also held that the First Amendment prohibited the prison from adopting a policy that prevented the attendance of non-Native Americans at sweat lodge ceremonies, which was part of the chief’s statement of protocols for the seven sacred rites. The court noted that the prison has allowed inmates to participate in sweat lodge ceremonies twice weekly since 1978. (North Dakota State Penitentiary)

U.S. District Court
ASSOCIATION
MARRIAGE
PRISONERS

Burke-Fowler v. Orange County, Florida, 390 F.Supp.2d 1208 (M.D.Fla. 2005). A former correctional officer brought an action against a county alleging that her termination was racially discriminatory, in violation of Title VII and § 1981, and based on her marital status, in violation of state law. The district court granted summary judgment in favor of the county. The court held that the officer failed to establish that her discharge for developing an intimate romantic relationship with, and later marrying, an inmate was the result of racial discrimination. The court noted that white officers who had close relationships with inmates were not as severely disciplined, but one officer did not know his partner’s criminal history, and the other officer had already been dating the woman before she was arrested. The plaintiff in this case developed a relationship with an inmate while he was under her authority. (Orange County Corrections Department, Florida)

U.S. District Court
MAIL

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials’ blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner’s cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

U.S. Appeals Court
TELEPHONE
FAMILY

Gilmore v. County of Douglas, State of Neb., 406 F.3d 935 (8th Cir. 2005). The relative of a former jail inmate brought a § 1983 action alleging that a 45% commission, paid to the county by the jail’s telecommunications providers on surcharged collect telephone calls from inmates, constituted a tax on inmates’ relatives that violated the Equal Protection Clause. The district court granted the county’s motion to dismiss and the relative appealed. The appeals court affirmed, finding that the relative was similarly situated to recipients of collect calls from non-inmates. The court held that the contract which called for the commission was aimed at generating revenues to defray the costs of providing inmates with telephone service, not at treating the recipients of inmates’ calls differently from others, and therefore had a rational basis. The court noted that a 15-minute inmate-initiated call from the jail cost \$2.30. (Douglas County Corrections Center, Nebraska)

U.S. Appeals Court
CENSORSHIP
PUBLICATIONS

Harbin-Bey v. Rutter, 420 F.3d 571 (6th Cir. 2005). A state prisoner filed a pro se § 1983 action alleging that his designation as a member of a security threat group without a hearing violated his constitutional rights. The district court dismissed the case and the prisoner appealed. The court held that the alleged censorship of the prisoner’s periodicals did not violate the inmate’s First Amendment rights. The prison policy prohibited prisoners from receiving mail depicting gang symbols or signs and required that the magazine be accepted or rejected as a whole. The court noted that the inmate’s contention that officials should go through each magazine and remove all prohibited material would be unduly burdensome. The inmate’s subscription was ultimately terminated by the publisher, and the prison rejected only a single issue. (Alger Maximum Security Facility, Michigan)

U.S. District Court
RELIGION

Henderson v. Berge, 362 F.Supp.2d 1030 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against prison officials for the alleged violation of his rights under the First Amendment Establish Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the defendants. The court held that the prison’s practice of making religious programming available over closed-circuit television to inmates’ cells did not violate the Establishment Clause. The court found that the religious broadcasts had a secular purpose of accommodating and protecting inmates’ free exercise of religion within the prison’s economic and security constraints. According to the court, providing only one satellite

channel with religious programming did not have the effect of advancing one religion over another, in that the inmates had a choice among several religious programs, as well as the choice of not watching any religious program. (Wisconsin Secure Program Facility, Wisconsin)

U.S. Appeals Court
HUNGER STRIKE

Jarriett v. Wilson, 414 F.3d 634 (6th Cir. 2005). A prisoner brought a civil rights action against prison officials under the Eighth Amendment, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner only had an unrecoverable “de minimis injury” for the purposes of his civil rights claim, which was subject to the provisions of the Prison Litigation Reform Act (PLRA). The court found that the officials’ refusal to give the prisoner medical treatment was not objectively unreasonable. The prisoner had been put in a small strip cage and held there for 12 hours. He experienced swelling, pain and cramps in his legs as a result, but these injuries were not serious enough to mention to medical staff on the day of his release from the strip cage, or two days later. When he mentioned them two weeks later there were no medical findings. Prison staff had checked on the prisoner’s assertions when he told them that he had a leg injury, before they placed him in the strip cage. The prisoner had been placed in the prison’s segregation unit for fighting with another inmate. While in segregation, he went on a hunger strike to protest various prison conditions. His cellmate was required to eat his meal in a strip cage in the segregation unit so he would not pass any food to the prisoner during the hunger strike. The strip cage is a mesh steel cage with a small hole through which clothes or other items can be passed. When they later suspected that the prisoner was hiding food in his cell, they placed him in another strip cage next to his cellmate and ordered him to strip. (Trumbull Correctional Institution, Ohio)

U.S. Appeals Court
REGULATIONS

Jordan v. Pugh, 425 F.3d 820 (10th Cir. 2005). A federal prisoner brought a civil rights suit challenging a Bureau of Prisons (BOP) regulation on several grounds including unconstitutional vagueness and overbreadth. The prisoner had successfully submitted two articles for publication in “Off!” magazine and he was disciplined for violating a regulation that said that inmates may not “act as [a] reporter” or “publish under a byline.” The district court granted partial summary judgment for the defendants and the prisoner appealed. The appeals court dismissed the appeal. (Administrative Maximum, United States Penitentiary, Florence, Colorado)

U.S. Appeals Court
PUBLICATIONS
OBSCENITY

Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005). A state prison inmate brought a § 1983 First Amendment action against corrections officials, challenging their refusal to permit him to organize an atheism study group among inmates, and challenging his right to receive certain publications by mail. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and vacated and remanded in part. The court held that the inmate’s atheism qualified as a “religion” for the purposes of the First Amendment, where the inmate maintained that his atheistic beliefs played a central role in his life, and there was no dispute that those beliefs were deeply and sincerely held. The court held that officials’ refusal to permit an atheism study group did not violate the Free Exercise Clause because the infringement on the inmate’s free exercise was not significant, since he was not prohibited from studying atheist literature on his own, consulting informally with other atheist inmates, or corresponding with members of atheist groups. But the court found that the officials violated the Establishment Clause because other religious groups were permitted to meet at the prison, and the officials offered no secular reason why the security concerns cited as the reason for denying the inmate’s request did not apply to those other groups. The court held that mail addressed to the inmate from the federal Department of Justice, a non-profit civil liberties organization, and other legally-oriented entities was not shown to be “legal mail” that was entitled to heightened protections under the First Amendment, and therefore opening the items outside of the inmate’s presence did not violate the inmate’s rights to receive mail and to have access to courts. The court held that including materials that depict sadomasochistic abuse within the definition of prohibited “pornography” did not constitute an overbroad definition of the term, noting that the officials were bound by the inclusion of such materials under the provisions of an earlier class action in which the inmate was a class member. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
BOOKS
TELEPHONE

King v. Federal Bureau of Prisons, 415 F.3d 634 (7th Cir. 2005). A federal prisoner brought a *Bivens* action against the Bureau of Prisons (BOP) and a warden claiming they had violated his rights by forbidding him from contacting his stockbroker and from buying a book on computer programming. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prison did not violate the prisoner’s First Amendment right of freedom of speech by preventing him from contacting his stockbroker because the order to sell was not the kind of verbal act that the First Amendment protected. But the court found that the prisoner stated a due process claim by alleging that officials arbitrarily prevented him from promptly contacting his stockbroker to sell stocks and that the claim was not frivolous for the purpose of the screening provision of the Prison Litigation Reform Act (PLRA). According to the court, the prison could have deprived the prisoner of property by depriving him of the power to respond to changing market conditions, and forbidding the prisoner to sell his property eliminated liquidity which was “one of the most important sticks in

[the] bundle of rights that constituted ownership.” The court found that the prisoner stated a First Amendment free speech claim by alleging that officials prevented him from obtaining a book on computer programming, where he claimed that he wanted the book to equip him to work as a programmer when he was released. The court noted that rehabilitation was a proper goal and government had to present some evidence to show that the restriction was needed, such as a need to protect the prison’s computer system. (Federal Bureau of Prisons, Illinois)

U.S. District Court
RELIGIOUS LITER-
ATURE
PUBLICATIONS

Lindell v. Casperson, 360 F.Supp.2d 932 (W.D.Wis. 2005). An inmate brought an action against correctional officials and employees alleging violation of the First and Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that officials did not substantially burden the inmate’s sincere religious beliefs in violation of RLUIPA by refusing to accommodate his requests for the group practice of Wotanism, a special diet, and possession of religious ceremonial items. The court concluded that the “idiosyncratic and inconsistent nature of the inmate’s various requests” showed that the requests were not based in sincere religious beliefs. According to the court, officials did not violate the inmate’s rights under the free exercise clause and RLUIPA by prohibiting his possession of Wotanist books that promoted Aryan supremacy and contained swastikas and other symbols associated with white supremacist movements. The court found that a prison ban on religious texts or practices that promote racism serves a compelling interest and is a legitimately restrictive means in furthering that interest. The court noted that the prison’s policy gave equal treatment to all religions. The court held that the prison’s policy on the possession of religious books did not violate the establishment clause, even though inmates of other religions were allowed to possess certain religious items and follow special diets. The court found that the inmate’s requests were not founded on a sincere religious belief and therefore he was not similarly situated to the other inmates. (Waupun Correctional Institution, and Wisconsin Secure Program Facility)

U.S. Appeals Court
FREE SPEECH
RETALIATION

McElroy v. Lopac, 403 F.3d 855 (7th Cir. 2005). An inmate brought a civil rights action against prison officials, alleging that he was fired from his prison job in retaliation for exercising his First Amendment right to free speech. The district court dismissed the case for failure to state a claim, and the inmate appealed. The appeals court affirmed. The court held that the inmate’s inquiries about lay-in pay were a matter of purely individual economic importance and not of public concern, and were not protected by the First Amendment. A corrections officer had announced that the sewing shop in which the inmate worked would be closed in two weeks and the inmate had asked whether inmate workers would receive “lay-in pay” while they were waiting to be transferred to another work assignment. (Illinois)

U.S. District Court
RELIGION
REGULATIONS

Munir v. Kearney, 377 F.Supp.2d 468 (D.Del. 2005). A state prison inmate brought a § 1983 in forma pauperis action against prison officials, alleging among other things that the imposition of discipline for his refusal to complete an essay as part of a substance abuse rehabilitation program violated his free exercise First Amendment rights. The district court granted summary judgment for the defendants, finding that the inmate’s First Amendment free exercise of religion rights were not violated. The inmate complained that completing the assignment would be a violation of his beliefs under Islam. The court held that the regulation was reasonably related to a legitimate penological interest in rehabilitation programs. The court noted that the inmate had numerous alternative means to exercise his religious freedom, and that it would be unduly burdensome to require the prison to provide an alternative essay question. The prison policy requires all inmates who are enrolled in a program to fully participate in the program. Any inmate who refuses to participate in the program in which he is enrolled is written up for “Refusal to Participate in Classified Treatment Program.” Once written up, the inmate is referred to a disciplinary hearing officer and is no longer eligible for an institutional work assignment. The assignment required the inmate to think and write about alternative choices that he could have made prior to being incarcerated, and the impact these choices may have had on his life. The inmate claimed that completing the assignment would be a violation of his religious beliefs, alleging that answering it “knowing the sinful nature in the sight of Allah, is willful and blatant disobedience to Allah.” (Sussex Correctional Institution, Delaware)

U.S. Appeals Court
BOOKS
RELIGIOUS LITER-
ATURE

Neal v. Lewis, 414 F.3d 1244 (10th Cir. 2005). A Shiite Muslim prisoner filed a pro se action seeking injunctive relief and damages under § 1983, alleging that prison officials violated his civil rights by interfering with his religious observance. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed. The court held that the officials did not violate the prisoner’s First Amendment rights by enforcing a prison regulation that limited the number of books that could be kept in a cell. The court also found no violation of the prisoner’s due process or equal protection rights. The regulation limited prisoners to the possession of twelve books, plus one dictionary, one thesaurus, and the primary religious text for their declared religion. The court noted that nothing prevented the prisoner from stocking his cell with twelve religious texts. According to the court, the regulation was applied equally to all inmates, and it promoted legitimate administrative and penological objectives including fire safety, institutional security, control of the source and flow of property in prison, and the effective

establishment of a behavior-incentive program. The court noted that the prisoner failed to choose any of the options available to him. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
EAVESDROPPING
TELEPHONE

Peoples v. CCA Detention Centers, 422 F.3d 1090 (10th Cir. 2005). A pretrial detainee who was housed at a detention center operated by a private contractor under a contract with the United States Marshals Service brought actions against the contractor and its employees, alleging Fifth and Eighth Amendment violations. The district court dismissed the action and the inmate appealed. The appeals court affirmed. The appeals court held that the employees did not punish the pretrial detainee in violation of his due process rights when they placed him in segregation upon his arrival at the center and kept him in segregation for approximately 13 months without a hearing. The court precluded the detainee's *Bivens* claim for damages under eavesdropping and breach of privacy statutes because state law provided the detainee with a cause of action. The detainee challenged the failure of the facility to provide him with unmonitored calls to his attorney. (Corrections Corporation of America, Leavenworth, Kansas)

U.S. Appeals Court
MAIL
PUBLICATIONS

Prison Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005). A nonprofit corporation that published and distributed prison-related publications sued a state corrections department and its policy-making employees, challenging the constitutionality of the department's inmate mail directive. The district court granted summary judgment in part, denied in part, and granted injunctive relief. The parties appealed. The appeals court affirmed. The court held that the department's ban on inmates' receipt of non-subscription bulk mail and catalogs violated the First Amendment, where the department's asserted interest in preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections, and enhancing prison security were not rationally related to the mail directive. The court found that the employees were entitled to qualified immunity regarding the First Amendment claims because the law was not clearly established at the time. According to the court, where prisoners had a First Amendment right to receive non-subscription bulk mail and catalogs, the same procedural protections had to be afforded to prisoners with regard to this mail as with first-class, periodical, or subscription bulk-rate mail. (Washington Department of Corrections)

U.S. District Court
NEWSPAPERS
RELIGIOUS LITER-
ATURE

Shaheed-Muhammad v. Dipaolo, 393 F.Supp.2d 80 (D.Mass. 2005). A prisoner brought a civil rights action against employees of a state corrections department alleging violation of his right to practice his Muslim religion. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the defendant failed to establish that the prisoner's religious beliefs were not sincerely held, noting that although the prisoner had a long history of pro se litigation, he might have been both litigious and religiously observant. According to the court, the fact that the prisoner first sought a pork-free diet and four months later sought a vegetarian diet could have suggested an evolution of his beliefs, and not "backsliding" or nonobservance of religious tenets. The court held that the prisoner's failure to file a grievance regarding the alleged confiscation of his religious medallion meant that his § 1983 claim concerning that incident was barred by the Prison Litigation Reform Act (PLRA). But the court found that the prisoner's letters to a Muslim prison chaplain and prison officials were "grievances," and therefore his § 1983 claim for denial of his request for a vegetarian diet was not barred by PLRA because the letters contained all of the information required by the relevant regulations.

The court concluded that the prisoner's claim arising from confiscation of a newspaper, *The Five Percenter*, published by a Muslim organization was not barred by the exhaustion requirement of the Prison Litigation Reform Act (PLRA) because once the newspaper was deemed to be contraband and was confiscated, the confiscation became a non-grievable matter. The court denied qualified immunity for the officials who confiscated the newspaper, finding that it was well-established at the time of the confiscation that prisoners retain their First Amendment rights inside prison walls. The court found that the prisoner failed to establish that prison officials retaliated against him by transferring him from one facility to another after he attempted to exercise his First Amendment rights. According to the court, although there were inconsistencies in the officials' arguments, they presented evidence of two disciplinary infractions that preceded the transfer which conceivably could have provided a basis for the transfer, and there was an indication that the prisoner had "numerous enemies" at the first facility. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
RELIGION

Teen Ranch v. Udow, 389 F.Supp.2d 827 (W.D.Mich. 2005). A faith-based organization that provides residential care for youth brought an action against state officials challenging a moratorium on funding to the organization on First and Fourteenth Amendment grounds. The district court granted summary judgment in favor of the state officials. Youths who were state wards could opt out of placement in the residential care program, or could decline to participate in religious activities. The court found that this did not give the youths a "genuinely independent private choice" so as to make the state's funding of the program permissible under the Establishment Clause. According to the court, the state selected the youths' placement, and although the youths could opt out of religious programs, they were not able to choose from a "menu of secular and religious programs." The court noted that pressure toward conformity would be great in the long-term residential program where the youth were separated from their parents,

deprived of many personal freedoms, and were under the daily supervision and influence of those who were leading the religious activities. The court also held that the moratorium did not violate the Free Speech Clause nor the Equal Protection Clause. (Teen Ranch, Michigan)

U.S. District Court
PRETRIAL
DETAINEES
TELEPHONE
VISITING

U.S. v. Ali, 396 F.Supp.2d 703 (E.D.Va. 2005). A pretrial detainee who was charged with terrorism-related offenses filed a motion for relief from conditions of confinement. The district court denied the motion, finding that the measures imposed did not violate due process. The court also found that judicial relief was not available because the detainee did not exhaust available administrative remedies, even though the detainee completed an inmate request form seeking permission to receive regular phone calls to his family and lawyers, and visits from his family. According to the court, the detainee did not pursue succeeding options available to him when his request was denied. The court held that the “Special Administrative Measures” (SAM) imposed on the detainee at the request of the Attorney General did not violate the detainee’s due process rights, where the SAMs were imposed to further the legitimate and compelling purpose of preventing future terrorist acts. The measures prevented the detainee from receiving regular phone calls from his family and lawyers, and from receiving visits from his family. According to the court, there was no alternative means to prevent the detainee from communicating with his confederates, and the special accommodations sought by the detainee would have imposed unreasonable burdens on prison and law enforcement personnel. The court noted that the measures did not restrict the detainee’s ability to help prepare his own defense. (Alexandria Detention Center, Virginia)

U.S. Appeals Court
HAIR
RELIGION

Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005). A Native American inmate sued state corrections officials challenging a prison hair grooming policy that required male inmates to maintain hair no longer than three inches, alleging it violated his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the inmate’s request for a preliminary injunction and the inmate appealed. The appeals court reversed and remanded, finding that the policy imposed a substantial burden on the inmate’s religious practice and that the policy was not the least restrictive alternative to achieve the state’s interest in prison security. The court noted that the inmate was not physically forced to cut his hair, but that he was subjected to punishments including confinement to his cell, imposition of additional duty hours, and reclassification into a less desirable work group. The court also noted that the state failed to explain why its women’s prisons did not adhere to an equally strict grooming policy. The court concluded that the inmate faced the possibility of irreparable injury absent the issuance of an injunction and the balance of hardships favored the inmate. (Adelanto Community Correctional Facility, California)

U.S. Appeals Court
ASSOCIATION

Westefer v. Snyder, 422 F.3d 570 (7th Cir. 2005). State prisoners brought a § 1983 action challenging their transfers to a higher-security prison. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoners’ suit challenging transfers to a high security prison was not subject to dismissal for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), where the transfer review process was not available to prisoners in disciplinary segregation, and the prisoners’ grievances were sufficient to alert the prison that the transfer decisions were being challenged. The court held that the alleged change in a prison policy that required transferring gang members to a high security facility did not constitute an ex post facto violation. The court ruled that the prisoners stated a claim for denial of due process, where the conditions at the high security prison were arguably different enough to give the prisoners a liberty interest in not being transferred there, and there was a dispute as to whether the state provided sufficient pre- and post-transfer opportunities for the prisoners to challenge the propriety of the transfers. The court held that the transfers did not violate the gang members’ First Amendment associational rights, noting that prisoners had no right to associate with gangs. (Tamms Correctional Center, Illinois)

U.S. District Court
HAIR
RELIGION

Williams v. Wade, 354 F.Supp.2d 894 (W.D.Wis. 2005). An inmate brought a § 1983 action against prison officials, alleging that requiring him to cut his dreadlocks off violated his freedom of religion, freedom of expression, equal protection, and due process rights. The district court granted the inmate permission to proceed in forma pauperis. The court noted that there was little chance of success for the inmate, but that there was no evidence of any purpose for requiring the inmate to cut his hair two months after arriving at the facility. (Prairie Du Chien Correctional Institution, Wisconsin)

U.S. District Court
PUBLICATIONS
REGULATIONS

Willson v. Buss, 370 F.Supp.2d 782 (N.D.Ind. 2005). A former inmate sued a prison superintendent, claiming that a rule that denied him receipt of magazines having homosexual content violated his First Amendment rights. The district court entered judgment in favor of the superintendent. The court held that there was a valid, rational connection between the prison’s ban on inmate receipt of “blatantly homosexual material” and that the ban furthered a legitimate, penological objective of protecting homosexual inmates from injury by the prison population which is traditionally hostile to them. The court noted that the impact of accommodating the inmate’s interest in having access to the magazines included the possibility that the materials could get into

the hands of other inmates who were not homosexual, and they could be subjected to assaults by homophobic fellow inmates. The court found that the rule was not void for vagueness under the First Amendment. (Westville Correctional Facility, Indiana)

2006

U.S. District Court
RELIGION

Americans United For Separation of Church and State v. Prison Fellowship Ministries, 432 F.Supp.2d 862 (S.D.Iowa 2006). A separation of church and state advocacy group, and affected state prison inmates, sued the State of Iowa, claiming that funding of a contract under which an organization providing pre-release rehabilitation services to inmates through a program based on Evangelical Christianity violated the Establishment Clause. The plaintiffs moved for declarative and injunctive relief. The district court held that: (1) the service provider was operating under color of state law, for purposes of a suit under § 1983; (2) the program was pervasively sectarian; (3) the program did not involve payments made at the direction of inmates, which would not violate Establishment Clause; (4) the program fostered excessive entanglement of government with religion; (5) the contract violated the Establishment Clause. The service provider was enjoined from further contract performance, would not be paid amounts due under its contract, and would be forced to return all payments received. The court noted that the plaintiffs had standing to sue the State of Iowa and corrections officials and the prison ministries organization, even though they were not Iowa taxpayers, because the inmate plaintiffs had made contributions to the telephone fund, designed to finance telephone use by inmates, from which withdrawals had been allegedly made to pay for the prison ministry in question. The court noted that if secular activities of a pervasively sectarian organization may be separated from sectarian activities, the secular activities may be funded by the government without violating the Establishment Clause. The court found that all instruction, regardless of subject, with exception of computer science, was presented as an aspect of Evangelical Christianity, and participants were required to participate in single and group devotional activities. According to the court, state prison inmates were not given true freedom of choice, there was no secular alternative to participation in the program, which offered superior living quarters and some relaxation of prison rules. The program provider was required to return the \$1,529,182 paid by the state. (Iowa Department of Corrections and InnerChange Freedom Initiative, Newton Correctional Facility)

U.S. District Court
RETALIATION

Bacon v. Taylor, 414 F.Supp.2d 475 (D.Del. 2006). A state prisoner brought a § 1983 action against three correctional officers, alleging denial of his First Amendment right of access to courts, retaliation for exercising his First Amendment free speech rights, and cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that the prisoner's allegations that a correctional officer, on one occasion, smoked a cigarette on the tier by another inmate's cell and blew smoke into that inmate's cell, and that on several occasions the correctional officer smoked in the isolated control pod, did not sufficiently allege that the prisoner was exposed to unreasonably high levels of environmental tobacco smoke (ETS) to the degree necessary to state claim a under § 1983 for violation of the Eighth Amendment. The court found that the prisoner's allegation that a correctional officer opened and read the draft of his lawsuit against her and then refused to return it to him did not sufficiently allege an actual injury as required to state a claim under § 1983 for violation of First Amendment constitutional right of access to the courts. The prisoner alleged only that as a result of not receiving his original draft back he had forgotten the exact dates he saw the officer smoking in the prison, but the prisoner did not allege that his inability to remember specific dates had unduly prejudiced his case against the officer. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison authorities could have reasonably interpreted the prisoner's draft of a § 1983 lawsuit against a correctional officer as a threat to the security and safety of the prison, or that a reasonable person would have known that the document was the draft of a legal complaint against the officer, justifying his placement in administrative segregation rather than constituting retaliation for the prisoner having exercised his First Amendment free speech rights by drafting the lawsuit against the officer. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
RELIGIOUS LITER-
ATURE
BOOKS

Borzycz v. Frank, 439 F.3d 388 (7th Cir. 2006). An inmate sued state prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging a ban on books the inmate deemed necessary for the practice of his Odinist religion. The district court entered summary judgment for the officials and the inmate appealed. The appeals court held that, even if the state substantially burdened the inmate's religious exercise by banning books he deemed necessary to practice his Odinist religion, the ban on such books was the least restrictive means to promote a compelling state interest in safety, and thus did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court noted that the books promoted violence to exalt the status of whites and demean other races, and that redaction of offensive material was not a realistic option. According to the court, a state prison procedure that prohibited activities and literature that advocate racial or ethnic supremacy or purity was not overbroad, in violation of free speech guarantees or RLUIPA, where the overbreadth of the regulation was not substantial in relation to its proper applications. Officials had refused to allow the inmate to possess the books

Creed of Iron, Temple of Wotan, and The NPKA Book of Blotar, which he said were necessary to practice his religion. The inmate identified his religion as Odinism (or Odinic Rite), which like Asatru and Wotanism entails the worship of Norse gods. The inmate maintained that the books were religious texts. The officials conceded that Odinism is a religion. (Wisconsin Department of Corrections)

U.S. District Court
PUBLICATIONS
NEWSPAPERS

Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). A former state prison inmate, proceeding pro se, brought a § 1983 action against corrections officials, alleging that their enforcement against him of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights. The court granted summary judgment for the officials. The court held that the inmate's claims for injunctive relief were moot and that the officials were entitled to Eleventh Amendment immunity insofar as the inmate's action sought monetary damages and was brought against the officials in their official capacities. The court found that the officials were entitled to qualified immunity because enforcement of the rules did not violate a clearly established constitutional right. (Lansing Correctional Facility, Kansas)

U.S. District Court
RETALIATION

Crenshaw v. Herbert, 445 F.Supp.2d 301 (W.D.N.Y. 2006). A state inmate brought a § 1983 action alleging that corrections employees violated his First Amendment rights when they removed him from certain jobs, allegedly in retaliation for filing a grievance against a corrections officer with whom he had an altercation. The district court granted summary judgment for the defendants, finding that there was no evidence of a causal connection between the inmate's protected activity and the adverse actions. The court noted that the inmate was initially removed from his nurse's aide position because of his own fears for his safety there, and his removal from a laundry job was allegedly for poor performance. (Attica Correctional Facility, New York)

U.S. District Court
PUBLICATIONS

George v. Smith, 467 F.Supp.2d 906 (W.D.Wis. 2006). A state prisoner sued prison officials under § 1983, alleging deprivation of his free speech rights and deliberate indifference to his serious medical needs. The officials moved for summary judgment and the district court granted the motion in part and stayed in part. The court held that: (1) the officials' ban on the prisoner's receipt of a newsletter on the ground that the newsletter solicited gifts did not violate the prisoner's free speech rights; (2) a prohibition against the prisoner possessing an atlas did not violate his free speech rights; (3) the officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang and thus was prohibited by regulation; and (4) the prisoner was not exposed to unreasonably high levels of environmental tobacco smoke. The court found that the prison officials' ban on the prisoner's receipt of a newsletter that advocated for healthcare improvements in the prison and encouraged readers to "(s)end donations" and to urge their families to "join in the fight," did not violate the prisoner's free speech rights, in that it was a reasonable application of the prison policy prohibiting delivery of correspondence soliciting gifts. Similarly, the court held that the prohibition against the prisoner possessing an atlas had a reasonable relationship to a legitimate penological interest, and thus did not violate his free speech rights, in that the possession of an atlas might allow the prisoner to plot escape routes. The court held that prison officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang, and thus was prohibited by a prison regulation, in as much as it was neither arbitrary nor irrational for the prison officials to conclude that a picture in the magazine portrayed gang-related hand signs. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
FOIA- Freedom of
Information Act

Giarratano v. Johnson, 456 F.Supp.2d 747 (W.D.Va. 2006). An inmate brought a § 1983 action against the director of a state corrections department, challenging the constitutionality of a statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA). The district court dismissed the action. The court held that the statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA) was rationally related to a legitimate state interest, and thus, it did not violate the inmate's right to equal protection. The court noted that the Virginia General Assembly, in passing the exclusion, could have believed that inmates were intrinsically prone to abusing VFOIA request provisions and that such frivolous requests would unduly burden state resources, or that inmates had less need to access public records because their confinement greatly limited the amount of contact they had with state government. (Red Onion State Prison, Virginia)

U.S. District Court
RELIGION

Gray v. Johnson, 436 F.Supp.2d 795 (W.D.Va. 2006). A prisoner brought a § 1983 action against prison officials claiming that he was compelled to participate in a residential substance abuse program that allegedly contained religious elements, in violation of the Establishment Clause of First Amendment. The Therapeutic Community Program (TCP) was operated for inmates with a history of substance abuse who have twelve to eighteen months left to serve. Those who qualify for the TCP either have to participate or forfeit the right to accrue good conduct time. Members of the TCP live together in a dorm and they are required to actively participate, and to encourage other members to do the same. If an inmate fails to participate satisfactorily, he loses his good conduct time, and prison officials may transfer him to a dorm with other inmates who either refuse to participate or who have refused to cooperate once in the program. The TCP offers therapeutic

group meetings, educational seminars, group talent shows, and Alcoholics Anonymous (AA) and Narcotics Anonymous meetings (NA). The program consists of five “phases,” each of which requires the completion of a variety of tasks, ranging from demonstrating certain behavioral modifications to completing a written test. The goal of each participant is to “phase out” of the program by completing the requisite activities for each phase. To that end, participants have at their disposal a library of self-help materials.

The district court entered judgment in favor of the defendants. The court held that prison officials had an objectively reasonable belief that the prisoner's participation in the residential substance abuse program did not violate his rights, and therefore were entitled to qualified immunity in prisoner's § 1983 action claiming that he was compelled to participate in the program in violation of the Establishment Clause of the First Amendment. Prison officials had previously taken actions in order to bring the program into compliance with Establishment Clause, including making Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) participation optional, removing any religious references from inspirational readings, separating religious library materials from secular ones, making the use of any religious library materials completely optional, and enacting a rule prohibiting participants from proselytizing but allowing them to discuss the role of religion in their personal recovery. According to the court, these steps created an objectively reasonable belief that the program complied with Establishment Clause.

The court held that the program did not have a non-secular legislative purpose in violation of the Establishment Clause of the First Amendment, where the program's dominant purpose was rehabilitation of inmates with a history of substance abuse, and prison officials demonstrated that rehabilitation was the true goal of program, not a sham secular purpose. According to the court, the program did not have the primary effect of advancing or inhibiting religion in violation of the Establishment Clause, where a reasonable observer would not construe religious activities which took place in program, including a single historical discussion of the Essene community, the performance of a single gospel song at a talent show, the availability of non-mandatory Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings, and the availability of spiritual materials in the community library, as advancement of religion by the state, since all activities involved free expression of other participants in program. The court found that the program did not impermissibly entangle religion and government in violation of the Establishment Clause, where staff members were required to intervene to prevent proselytizing when individuals expressed their faith during the program. (Therapeutic Community Program, Botetourt Corr'l Ctr., Virginia)

U.S. Appeals Court
VOTING

Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). Black and Latino inmates and parolees brought an action against the New York Governor, Chairperson of the Board of Elections, and Commissioner of Corrections to challenge, as a violation of the Voting Rights Act (VRA), a statute disenfranchising incarcerated and paroled felons. The district court dismissed the claim. The inmates and parolees appealed and en banc review was granted. The appeals court affirmed and remanded, finding that the VRA prohibition against voting qualifications or prerequisites that resulted in a denial or abridgement of the right to vote on account of race or color did not apply to vote denial and dilution claims. (Shawangunk Correctional Facility, New York)

U.S. District Court
RELIGION
PUBLICATIONS

Jesus Christ Prison Ministry v. California Department of Corrections, 456 F.Supp.2d 1188 (E.D.Cal. 2006). A prison ministry program and state prisoners brought an action against the California Department of Corrections and Rehabilitation (CDCR), alleging that a correctional facility's policy prohibiting the sending of free softbound Christian literature, compact discs, and tapes to prisoners who have requested those materials violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and their First Amendment rights. The court held that the policy violated prisoners' free exercise and free speech rights under First Amendment. According to the court, the asserted penological goals of preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections or enhancing prison security did not justify the policy, and the distinction between approved vendors and unapproved vendors was arbitrary and not reasonably related to legitimate penological interests. The court also found that the policy violated prisoners' rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) where the approved vendor policy placed a “substantial burden” on the exercise of the prisoners' religious beliefs because prisoners were unable to engage in conduct that is motivated by their sincere religious beliefs without access to the materials provided by the unapproved vendor at no cost, and the unique study and worship materials provided by the unapproved vendor were unavailable through any of the approved vendors. (California State Substance Abuse Treatment Facility)

U.S. District Court
MOVIES

Jewell v. Gonzales, 420 F.Supp.2d 406 (W.D.Pa. 2006). A class of inmates brought an action against the U.S. Attorney General, the Director of the Federal Bureau of Prisons and a warden, challenging the constitutionality of a program statement and institutional supplement prohibiting the showing of unedited R-rated movies to inmates. The parties cross-moved for summary judgment. The district court granted summary judgment in favor of the defendants. The district court held that the class of inmates had standing to challenge the constitutionality of the program statement and institutional supplement. According to the court, the prohibition lacked a rational connection to the legitimate governmental interest of advancing punishment and deterrence, as

required for the prohibition to pass muster under the First Amendment. The court also found that the prohibition lacked a rational connection to the legitimate governmental interest of providing a safe and non-hostile work environment to prison employees, where the government failed to establish that individuals who had chosen corrections work would have been strongly offended by the showing of R-rated films. But the court held that the prohibition did have a rational connection to the legitimate governmental interest of ensuring efficient allocation of prison resources, as required for the prohibition to pass muster under the First Amendment, because the rule amendment authorizing the prohibition was aimed at ensuring that taxpayers' money was spent on reasonable measures to maintain and secure prisoners rather than on unnecessary luxuries. The court also found that the prohibition had a rational connection to a legitimate governmental interest of promoting the rehabilitation of federal inmates, where the government reasonably viewed R-rated films as a medium which often contained types of negative messages, references or stimuli that reinforced criminogenic risk factors. The court noted that the prohibition preserved an alternative means for prisoners to exercise their First Amendment rights because inmates retained access to films rated G, PG, and PG-13 as well as cable television programming and R-rated films edited for standard television, and that such an accommodation would not have had an impermissible ripple effect upon prison resources. (Federal Correctional Institution, McKean, Pennsylvania)

U.S. Appeals Court
MAIL

Jones v. Brown, 461 F.3d 353 (3d Cir. 2006). State prisoners brought an action against prison officials, claiming that a policy of opening and inspecting their legal mail outside of their presence violated their First Amendment rights. The district court granted judgment for the prisoners and the officials appealed. Another district court on similar claims granted judgment for the officials and the prisoners in that case also appealed. The cases were consolidated on appeal. The court entered judgment for the prisoner, finding that the policy of opening legal mail outside the presence of the addressee prisoner impinged upon the prisoner's right to freedom of speech under the First Amendment, and that the legal mail policy was not reasonably related to the prison's legitimate penological interest in protecting the health and safety of prisoners and staff. The court held that reasonable prison administrators would not have realized that they were violating the prisoners' First Amendment free speech rights by opening prisoners' legal mail outside of the prisoners' presence, entitling them to qualified immunity. The court noted that although the administrators maintained the policy after three relatively uneventful years had passed after the September 11 terrorist attacks and subsequent anthrax concerns, the policy was reasonable when it was established. (New Jersey Department of Corrections)

U.S. District Court
CRITICISM
CONVERSATION

King v. Ditter, 432 F.Supp.2d 813 (W.D.Wis. 2006). A state inmate brought a § 1983 action against a prison job supervisor, alleging that the supervisor lowered his pay and ultimately fired him for criticizing the supervisor's managerial practices. The supervisor moved for dismissal and the district court dismissed in part, and denied dismissal in part. The court held that the inmate stated a First Amendment retaliation claim, when the complaint alleged that the inmate engaged in the protected activities of writing letter to warden and complaining to others about supervisor's racism and changes in work schedule, and that the inmate experienced adverse actions in response. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
MAIL

Koutnik v. Brown, 456 F.3d 777 (7th Cir. 2006). A state prisoner brought a pro se § 1983 action, challenging the confiscation of his outgoing letter, which contained a swastika and a reference to the Ku Klux Klan. The prisoner alleged violations of his First Amendment free speech rights, and his due process rights. The district court dismissed the due process claim, and granted summary judgment in favor of defendants on remaining claim. The prisoner appealed. The appeals court affirmed. The court held that the prison regulation, prohibiting prisoners from possessing symbolism that could be associated with any inmate group not approved by the warden, was not impermissibly vague, for the purpose of determining whether the regulation was facially violative of the prisoner's First Amendment free speech rights. According to the court, although the regulation gave some discretion and flexibility to prison officials, the prison setting required it to ensure order and safety. The appeals court deferred to state prison officials' assessment of whether a swastika and a reference to the Ku Klux Klan in the prisoner's outgoing letter were gang-related symbols, for the purpose of the prisoner's claim that seizure of the letter by prison officials violated his First Amendment right to free speech, where knowledge of gang symbolism was acquired primarily through interaction with and observation of prisoners, and the symbolism was constantly changing. According to the court, the confiscation of the prisoner's outgoing letter furthered the substantial governmental interest in prisoner rehabilitation, and thus, it did not violate the prisoner's First Amendment free speech rights. The court noted that the letter was an attempt to express the prisoner's affiliation with racially intolerant groups, which thwarted the state's goals of encouraging the prisoner to live crime-free when released from custody, and fostering the prisoner's ability to resolve conflicts without violence. (Wisconsin Secure Program Facility)

U.S. Appeals Court
VOTING

Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). A felon filed an action alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted the prison officials' motion for summary judgment, and the felon appealed. The appeals court held

that felon was not a resident of New York and thus did not have standing to challenge New York's felon disenfranchisement statute as a violation of the Voting Rights Act. The court noted that even though the felon had been incarcerated in New York prisons for the past 30 years, the inmate was a California resident before he was incarcerated in New York, he was never resident of New York, and he disavowed any intention to become a resident of New York in future. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
PRISONER PUBLI-
CATIONS

Myron v. Terhune, 457 F.3d 996 (9th Cir. 2006). A state prisoner brought a § 1983 action against several correctional officers and medical personnel at a prison. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court found that a state regulation governing prison publications did not give the prisoner a liberty interest, protected by the due process clause, in participating in the publication and distribution of an inmate publication, where the regulation granted unfettered discretion to prison officials to restrict prisoner publications. (Salinas Valley State Prison, California)

U.S. Appeals Court
RETALIATION

Pearson v. Welborn, 471 F.3d 732 (7th Cir. 2006). An inmate brought an action against prison personnel, alleging retaliation in violation of the First Amendment. The district court entered judgment upon jury verdict in favor of the inmate. Inmate appealed the court's refusal to award attorney fees and declaratory relief, and a prison warden and social worker cross-appealed. The appeals court affirmed. The appeals court held that the inmate's oral complaints to prison personnel about prison conditions, including the use of shackles in group therapy and denial of yard time to prisoners in a pre-transfer unit, related to matters of public concern and were designed to effect a change in prison policy, and thus, they were protected by the First Amendment. The court held that the inmate, who was awarded only nominal damages under the Prison Litigation Reform Act (PLRA) in his action against prison personnel, was not entitled to an attorney fee award greater than 150% of the nominal damages based on his claim for declaratory judgment, that his punishment by personnel was illegal. The court noted that the only relief the inmate secured was nominal damages, and since the inmate had already been transferred to another facility, a declaratory judgment would have been largely duplicative of the jury's verdict concluding that personnel had retaliated against inmate. (Tamms Correctional Center, Illinois)

U.S. District Court
MAIL
PUBLICATIONS

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court also held that the officials did not violate the inmate's First Amendment free speech rights by refusing the word puzzles sent by the inmate's family through regular mail and by disallowing catalogs for magazines or books, where there was no allegation that the inmate had been denied actual magazines or books, and word puzzles were not permitted under prison regulations. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. (Delaware Correctional Center)

U.S. District Court
RELIGION

Perez v. Frank, 433 F.Supp.2d 955 (W.D.Wis. 2006). A Sunni Muslim inmate sued a state prison, claiming violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The inmate petitioned for permission to proceed in forma pauperis. The district court held that: (1) the prison did not violate RLUIPA by refusing to leave a dayroom open all hours, to allow for ritual washing (Wudu) at any time; (2) the inmate could proceed with his claim that he was barred from participating in named religious ceremonies and from joining in a group prayer, in violation of RLUIPA; (3) the inmate could proceed with his claim that he was denied prayer oil, in violation of RLUIPA; (4) the inmate could proceed with his claim that his exercise of religion rights under First Amendment were violated; (5) the denial of desired quantities of prayer oil and the opportunity for inmate-led services was not an Establishment Clause violation; (6) the inmate could proceed with his claim that the disparity of treatment for feast days, for various religions, was an Establishment Clause violation; and (7) the inmate could proceed with his claim that denial of access to Muslim lectures was a freedom of speech violation. (New Lisbon Correctional Institution, Wisconsin)

U.S. District Court
NAME

Porter v. Caruso, 431 F.Supp.2d 768 (W.D.Mich. 2006). A state inmate filed an action alleging that prison officials violated his First Amendment free exercise rights by refusing to refer to him by his new legal name, and by denying his request to be placed on a kosher meal plan. The officials moved to dismiss and the district court held that dismissal of the inmate's exhausted claims was not warranted. The inmate asserted that he was an adherent of an ancient Egyptian religion known as Kemetic Spiritual Science, and that as part of his religious faith he legally changed his name. The inmate alleged that corrections officials repeatedly failed to comply with their own policy directives and forced him to refer to himself by his former name. (Mich. Dept. of Corrections)

U.S. District Court
FOIA- Freedom of
Information Act

Prison Legal News v. Lappin, 436 F.Supp.2d 17 (D.D.C. 2006). A prison legal journal, Prison Legal News (PLN), brought an action against the federal Bureau of Prisons (BOP), challenging the agency's refusal to grant a waiver of search and duplication fees associated with a Freedom of Information Act (FOIA) document request. The district court granted summary judgment for the plaintiff, finding that the BOP was the proper defendant in the action, and the BOP improperly denied the fee waiver request. According to the court, PLN demonstrated that the disclosure of records pursuant to the Freedom of Information Act (FOIA) would contribute to the understanding of government operations or activities, as required to qualify for a fee waiver, since the information at issue had not reached the threshold level of dissemination, and where the request sought information regarding specific events that occurred within BOP facilities that would provide insight to the public about how its federal prisons were being managed and operated, and how its tax dollars were being expended. PLN had submitted a FOIA request to the BOP seeking "a copy of all documents showing all money paid by the [BOP] for lawsuits and claims against it" between January 1, 1996 and July 31, 2003. Specifically, the plaintiff sought "a copy of the verdict, settlement or claim in each case showing the dollar amount paid, the identity of the plaintiff/claimant and the legal identifying information for each lawsuit or claim or attorney fee award" and "a copy of the complaint ... or the claim ... in each incident which describes the facts underlying each lawsuit and claim." Under FOIA, fees will be waived if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." To support its request for a fee waiver, PLN provided the following information in its letter to the BOP: "PLN is a § 501(c)(3) non-profit organization. We are a serious legal and political journal that reports on news and litigation involving detention facilities. We have published monthly since 1990 and currently have around 3,400 subscribers in all 50 states. We [e]stimate our actual readership to [be] in the range of 18,000 people. We believe that the requested documents will shed light on the operations of the BOP and help provide the public with a better understanding of how the nation's prison system is run and managed since damage verdicts and settlements are an important means of measuring respect for constitutional rights within penal facilities. Moreover, the payout of government money is a strong indicator to tax payers of how government facilities are operated. The information requested is plainly related to the operations and activities of the BOP." (Federal Bureau of Prisons)

U.S. District Court
HAIR

Ragland v. Angelone, 420 F.Supp.2d 507 (W.D.Va. 2006). A state prisoner challenged a prison's grooming policy as violative of his constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Rastafarian prisoner sought to wear his hair and beard uncut but he was punished under the prison's policy. The state moved for summary judgment. The district court granted the motion, holding that the policy was constitutional, that RLUIPA was constitutional, that prison officials were entitled to qualified immunity, and that the policy did not violate RLUIPA. According to the court, the inmate grooming policy was rationally related to legitimate penological interests and thus did not violate the Rastafarian prisoner's rights under the First Amendment Free Exercise Clause, the Eighth Amendment, or the Fourteenth Amendment Due Process and Equal Protection Clauses. The court found that the policy furthered compelling penological interests in security, staff safety, inmate identification, and inmate health, and that a proposed religious exception to the policy was unworkable. (Virginia Department of Corrections)

U.S. Appeals Court
RETALIATION
SEX OFFENDERS

Senty-Haugen v. Goodno, 462 F.3d 876 (8th Cir. 2006). A civilly-committed sex offender brought an action against the Commissioner of the Minnesota Department of Human Services, other Department officials, and sex offender program employees, alleging violations of federal and state law for being placed in isolation, receiving inadequate medical attention, and being retaliated against. The district court entered summary judgment in favor of the defendants and the offender appealed. The appeals court affirmed. The court held that placement of the civilly-committed sex offender in isolation because of rule infractions did not infringe on his procedural due process rights, given that his commitment was indefinite, that he received notice and had the right to be heard, that the decision to use isolation was a discretionary decision by state officials, and that the State had a vital interest in maintaining a secure environment. The court found that the offender's transfer was not in retaliation for his alleged advocacy for another patient, so as to violate the offender's speech rights, where the sex offender program officials indicated that they transferred the offender to lessen his contact with the patient, whom the offender was suspected of exploiting, and where the offender failed to present any evidence that the transfer took place for any other reason. (Minnesota Sex Offender Program, Minnesota Department of Human Services)

U.S. District Court
NAME

Shidler v. Moore, 409 F.Supp.2d 1060 (N.D.Ind. 2006). A prisoner brought a pro se action against prison officials under § 1983 and Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of his rights to worship, to petition for redress of grievances, and to have access to courts. The prisoner requested a preliminary injunction and the district court denied the request. The court held that the prisoner stated cause of action against prison officials under § 1983 seeking monetary damages for First Amendment and RLUIPA violations by alleging that all inmates in his housing unit were denied communal worship. The court noted that the statute prohibiting

prisoners from bringing federal civil actions for mental or emotional injury absent a showing of physical injury does not restrict damages in a First Amendment constitutional claim. The court found that the prisoner stated cause of action for First Amendment violations in § 1983 complaint against a prison chaplain and administrative assistant, in connection with alleged denial of communal worship, in that it was reasonable to infer from the prisoner's factual allegations that such officials might have implemented or enforced, or could have lifted, the restrictions at issue while the prisoner was in certain housing units. According to the court, the alleged failure of state prison officials to quickly correct records that listed the prisoner's religion, with the result that the prisoner was prevented from engaging in communal worship for 39 days, if proven, did not violate the prisoner's First Amendment rights where any such actions were the result of negligence, not an intent to deny the prisoner access to worship. The court found that allegations of the prisoner's complaint against prison officials, stating that he was not allowed to use his religious name to send or receive mail, stated a cause of action under the First Amendment and RLUIPA for monetary damages and injunctive relief. The court ruled that prison officials' alleged actions of denying the prisoner access to a law library, denying him the ability to make copies, and confiscating his legal materials, if proven, did not violate his constitutional right of access to courts, in that he could write to the court and thus could file a complaint, he could send an original document and state that he was unable to obtain copies, and he did not maintain that unreturned legal papers were not replaceable. The court noted that there is no abstract, freestanding right to a law library, and a prisoners' constitutional right of access to courts goes no further than access. The court found that the confiscation of a prisoner's legal paperwork is merely a property loss, not a denial of the constitutional right of access to courts, if the papers are replaceable. (Miami Correctional Facility, Indiana)

U.S. District Court
NAME
RELIGION

Shidler v. Moore, 446 F.Supp.2d 942 (N.D.Ind. 2006). A Sunni Muslim inmate brought a civil rights action against prison officials who allegedly prevented him from practicing his religion. The district court held that the inmate's allegations regarding the prison's prayer oil policy stated claims for declaratory relief, monetary and punitive damages for a violation of the First and Fourteenth Amendments, and for declaratory relief as well as nominal and punitive damages for a violation of Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate alleged that a prison official created and enforced a policy prohibiting the use of prayer oil, that when the policy was changed, only one type of oil was available and that he was allergic to it, and that the official refused to permit him to purchase an alternative to which he was not allergic. The court found that the inmate's allegation that he was denied communal worship even though Christians were permitted communal worship, that he was denied the ability to participate in Ramadan activities, and that he was classified as a Christian for the purpose of preventing him from practicing his religion, also stated a claim. But the court found that the prison policy that prevented the inmate from using his religious name on his mail did not violate his First Amendment right to free exercise of religion, absent an allegation that the inmate had legally changed his name in state court, or that members of other religious groups were able to change their names more easily. (Miami Correctional Facility, Indiana)

U.S. District Court
RETALIATION
CRITICISM

Siggers-El v. Barlow, 433 F.Supp.2d 811 (E.D.Mich. 2006). A state inmate filed a § 1983 action alleging that a prison official transferred him in retaliation for his exercising his First Amendment rights. After a jury verdict in the inmate's favor, the official filed a motion for a new trial, and the inmate moved for costs and attorney fees. The district court held that the Civil Rights of Institutionalized Persons Act (CRIPA) that prohibited inmates from recovering mental or emotional damages in the absence of a the physical injury, did not bar the inmate's claim for emotional damages and that evidence supported the award of punitive damages. The court applied only \$1 of the inmate's damages award to his attorney fee award. The court noted that a jury may be permitted to assess punitive damages in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless disregard or callous indifference to the federally protected rights of others. According to the court, the jury's award of punitive damages against the prison official was supported by evidence that the official transferred the inmate in retaliation for the inmate's exercise of his First Amendment free speech rights in complaining to the official's superiors about the official's misconduct, even though the official was aware that the transfer would prevent the inmate from seeing his attorney, from paying his attorney, and from seeing his emotionally-disabled daughter. (Michigan Department of Corrections)

U.S. District Court
PUBLICATIONS
FREE SPEECH

Smith v. Miller, 423 F.Supp.2d 859 (N.D.Ind. 2006). A state inmate filed a § 1983 action challenging prison officials' decision to confiscate his anarchist materials. The officials moved for summary judgment. The district court held that fact issues remained as to whether mere possession of anarchist literature presented a clear and present danger to prison security. The court opened its opinion by stating: "The issue of anarchism has raised its ugly face again, this time in a prison context...The question here focuses on whether or not prison officials at the Indiana State Prison are authorized to confiscate anarchist materials from inmates incarcerated there...While the question presented here is a very close one, and it may be one on which the prison authorities will later prevail...there needs to be a more extensive factual record." The court

noted that if a trial were to be held, the court would attempt to appoint counsel for the plaintiff and make every effort to keep the case as narrowly confined as possible. According to the court, "Although it is a close case, there is enough here, if only barely enough, to keep the courthouse doors open for this claim which necessarily involves overruling and denying the defendants' motion." (Indiana State Prison)

U.S. District Court
ASSOCIATION

Stewart v. Alameida, 418 F.Supp.2d 1154 (N.D.Cal. 2006). A state prison inmate brought a § 1983 action against California corrections officials alleging violation of his First and Fourteenth Amendment associational and due process rights, claiming that his validation as a gang associate kept him in a secure housing unit. Officials moved for summary judgment and the district court granted the motion. The court held that state regulations providing for gang validation based on association bore a rational relation to a penological interest in institutional security and that the full accommodation of inmate's associational rights would seriously hinder security and compromise safety. According to the court, an interview after he was gang-validated afforded the inmate an adequate procedural remedy consistent with due process. The court found that any of three photographs of the inmate posing with inmates, some of whom were validated gang associates and one of whom was a validated gang member, supported the inmate's gang validation consistent with due process. (San Quentin Adjustment Center, California)

U.S. District Court
FOIA- Freedom of
Information Act

Swope v. U.S. Dept. of Justice, 439 F.Supp.2d 1 (D.D.C. 2006). A federal inmate brought a pro se action under the Freedom of Information Act (FOIA) seeking copies of recorded telephone conversations between him and third parties in the possession of Bureau of Prisons (BOP). The district court held that the third parties involved with the calls did not waive their privacy interests, that the recordings were exempt from disclosure, and that the exempt and non-exempt portions of the recordings were non-segregable. According to the court, the BOP recordings of inmate telephone conversations are the functional equivalent of "law enforcement records" for the purposes of a Freedom of Information Act (FOIA) exemption from disclosure of law enforcement records that would involve an invasion of a third party's privacy. (Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
PUBLICATIONS
MAIL
LEGAL MAIL

Wardell v. Duncan, 470 F.3d 954 (10th Cir. 2006). A state prisoner brought a pro se § 1983 action against prison officials, alleging that a prison policy that required prisoners to purchase all hobby materials, legal materials, books, and magazines from their prison accounts, and prohibiting gifts to prisoners of such materials from unauthorized sources, violated his due process rights, his right of access to the courts, and his First Amendment rights. The district court granted summary judgment in favor of the officials. The prisoner appealed. According to the court, the confiscation of documents mailed to the prisoner which were purchased by a person who was a visitor of another inmate, did not violate the prisoner's First Amendment rights, where the ban was content neutral, it was rationally related to the penological interest of preventing bartering, extortion, possession of contraband, and other criminal activity by prisoners, the prisoner was still able to purchase the same materials himself using funds from his prison account, and he had access to the same materials in the prison law library. The court noted that permitting such third-party gifts and then trying to control the resultant security problems through reactive efforts of prison officers would impose an undue burden on prison staff and resources. The court held that the inmate's proposed accommodation, allowing third party gifts if third parties provided relevant information, such as the source, amount, and manner of payment, would entail data collection, processing, and substantial staff resources. The suit was prompted by prison officials' interception of three parcels mailed to plaintiff. The first contained books from a "Mystery Guild" book club; the other two contained legal documents from the Colorado State Archives and the Library of Congress which had been purchased for the plaintiff by a third party who was listed as another inmate's visitor and, thus, fell within a Colorado Department of Corrections (CDOC) prohibition on gifts from unauthorized sources. The court also held that denial of the prisoner's access to courts claim that challenged the prison policy restricting receipt of his legal mail, was warranted, absent a showing that the prisoner's failure to receive his legal mail actually frustrated, impeded, or hindered his efforts to pursue a legal claim. (Fremont Correctional Facility, Colorado)

U.S. Appeals Court
SEX OFFENDERS

Weems v. Little Rock Police Dept., 453 F.3d 1010 (8th Cir. 2006). A registered sex offender brought a civil rights suit challenging the provisions of the Arkansas Sex Offender Registration Act that required sex offenders to register, and the provision of the statute that prohibited certain registered sex offenders from living within two thousand feet of a school or a daycare center. The district court denied the offenders' motion for class certification and dismissed the suit for failure to state a claim. The offender appealed. The appeals court affirmed. The court held: (1) the residency restriction did not violate substantive due process; (2) the residency restriction did not violate equal protection by treating the high-risk offenders who did not own property differently from the property-owning high risk offenders or from low-risk offenders; (3) the restrictions did not violate a constitutional right to travel; (4) the restriction did not constitute an unconstitutional ex post facto law as applied to the offenders who sustained convictions prior to the enactment of the statute; and (5) the offenders were not deprived of any liberty interest in avoiding a risk assessment without procedural due process. The court held that the statute rationally advanced a

legitimate government purpose of protecting children from the most dangerous sex offenders by reducing their proximity to the locations frequented by children, that the statute was intended to be regulatory and non-punitive, and was not punitive in effect. (Arkansas General Assembly, Sex and Child Offender Registration Act)

2007

U.S. District Court
LANGUAGE

Allah v. Poole, 506 F.Supp.2d 174 (W.D.N.Y. 2007). A state inmate sued correctional officers under § 1983, alleging various violations of his constitutional rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a commissary supervisor's directive to the inmate and other prisoners working at the commissary, that they speak to each other only in English, did not violate any constitutional right the inmate may have had to converse with fellow prisoners in Spanish. According to the court, the stated rationale for the directive, to ensure the supervisor's own safety, was indisputably legitimate and the restriction on the inmate's use of Spanish applied only while he was working in the commissary. (Five Points Correctional Facility, New York)

U.S. District Court
BOOKS
PUBLICATIONS

Daker v. Ferrero, 506 F.Supp.2d 1295 (N.D.Ga. 2007). A former prison inmate brought a § 1983 action against corrections officials, challenging alleged denials of publications and mail, as well as alleged retaliatory acts by officials. The district court granted summary judgment as to certain claims and the officials moved for reconsideration as to a portion of that order and for summary judgment, and the inmate moved for summary judgment. The district court held that reconsideration of summary judgment was warranted by genuine issues of fact that existed as to whether prison officials violated the inmate's First Amendment rights by retaliating against him after he brought numerous grievances and a civil rights action. The court found that the officials were entitled to qualified immunity as to books containing sexually explicit materials, instructions on fighting techniques and military procedures and materials, criminal investigatory techniques, and instructions on building electronic devices, but issues of fact existed as to whether prison officials denied a book about revolution and four legal books based on their content. (Georgia Department of Corrections)

U.S. District Court
REGULATIONS

Daker v. Wetherington, 469 F.Supp.2d 1231 (N.D.Ga. 2007). A Muslim inmate brought a suit under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that his religious beliefs were not accommodated adequately while he was incarcerated at several prison facilities. The defendants moved for summary judgment, which the district court granted in part and denied in part. The Georgia Department of Corrections' shaving policy provides that goatees, beards, and similar facial adornments are prohibited unless medically indicated. The court held that the Department's shaving policy was not rendered constitutionally infirm by speculating that the Department could, without undermining security, allow a very small percentage of its prisoners to grow facial hair. The inmate had suggested that the prison accommodate his beliefs by transferring him out of the state prison system. The Muslim inmate had challenged a requirement at one of the prisons that he recite the Prison's Code of Ethics, but the court found that he did not have standing to pursue that claim. The court noted that the inmate was no longer required to recite the purportedly offensive Code, and that among the four prisons in which the inmate had been incarcerated, only one prison warden required him to recite the Code of Ethics. The court held that the Muslim inmate was unlawfully denied a weekly Ta'lim class, which was an Islamic educational class. Although the prison policy previously denying Muslim prisoners access to Ta'lim had been revised, the Department provided no assurance that the inmate would not be subjected to a similar policy should he be transferred to another prison facility in the future. The court allowed this claim to go forward in view of the frequency of transfer of the inmate between the Department facilities in the previous seven years, and the likelihood that he would be transferred to another facility in the future where there was little assurance that he would not be denied Ta'lim. (Ray James State Prison, Arrendale State Prison, Hancock State Prison and Spalding County Correctional Institution, Georgia)

U.S. Appeals Court
BOOKS
NEWSPAPERS

George v. Smith, 507 F.3d 605 (7th Cir. 2007). A state prisoner sued prison officials under § 1983, alleging deprivations of his speech rights and deliberate indifference to his serious medical needs. The district court dismissed some of the claims and granted summary judgment for the defendants on the remaining claims. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that his health was placed at risk by an allegedly malfunctioning dishwasher that left particles of food on his plate at dinner failed to state an Eighth Amendment claim. The court found that the prisoner's allegations that a prison employee had failed to provide a purported atlas that he had ordered, on security grounds, were insufficient to state a First Amendment violation where the prisoner did not provide a description, title or other identifying information for the book. The court held that the prisoner's allegation that the prison refused to allow him to speak to the public at large by placing advertisements in newspapers was insufficient to state a claim for violation of his First Amendment free speech rights where the prisoner did not provide the content of the advertisements. (Wisconsin)

U.S. District Court
PUBLICATIONS

Greybuffalo v. Kingston, 581 F.Supp.2d 1034 (W.D.Wis. 2007). A state inmate brought a § 1983 action for declaratory and injunctive relief, challenging, on First Amendment grounds, prison officials' actions in confiscating two documents as "gang literature" and disciplining him for possessing the documents. One document was a publication of the "American Indian Movement" (AIM). The other was a code of conduct for a prisoner group that was created to enable "self-protection of Native Americans." The court held that interpreting the prison regulation to prohibit inmates from possessing literature of any group that had not been sanctioned by prison officials was an exaggerated response to legitimate security interests that violated the First Amendment. The court found that the history of the civil rights organization referenced in the seized document did not permit the reasonable conclusion that the inmate's possession of the document implicated a legitimate interest in preventing gang activity or prison security. The court ordered the expungement from prison records of the finding that the inmate's possession of the document violated prison rules. The court held that officials could reasonably conclude that the inmate's possession of a code of conduct for a prisoner group that was created to enable "self-protection" of Native American prisoners could lead to future security problems and that the officials did not violate the inmate's free speech rights when it prohibited and disciplined the inmate for

possessing the code of conduct. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
FREE SPEECH
RETALIATION

Gullick v. Ott, 517 F.Supp.2d 1063 (W.D.Wis. 2007). A plaintiff filed a § 1983 action alleging that a deputy sheriff detained him and issued a citation because of his support for a candidate opposed by the deputy in a sheriff's race, in violation of the First Amendment. The deputy moved for summary judgment. The district court denied the motion. The court held that the plaintiff did not have to demonstrate an absence of probable cause in order to establish a First Amendment retaliation claim. The court found that summary judgment was precluded by fact issues as to whether the deputy sheriff had probable cause to detain the plaintiff and issue him a citation, and whether the deputy's actions were motivated by the plaintiff's support for the candidate. The court found that the plaintiff suffered sufficient injury to support a retaliation claim and that the deputy was not entitled to qualified immunity because it was clearly established at the time of the incident that law enforcement officers could not retaliate against citizens for exercising their First Amendment rights. The court opened its decision by stating "The facts of this case sound like they came straight from a bad movie on cable TV..." (Columbia County, Wisconsin)

U.S. Appeals Court
PHOTOGRAPHS

Jackson v. Frank, 509 F.3d 389 (7th Cir. 2007). A prisoner brought a § 1983 action against prison officials, challenging a prison's policy of preventing prisoners from possessing individual, commercially published photographs. The prisoner had asked to display a picture of the actress Jennifer Aniston in his cell. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed. The court held that the policy did not violate the prisoner's First Amendment right to receive information, where the policy rationally advanced the prison's interest in saving staff resources, the prisoner had an alternative means of exercising his right through subscribing to magazines, and the prisoner put forward no evidence of a cost savings of capping the volume of mail that inmates might receive compared to the benefits of banning individual, commercial photographs. (Green Bay Correctional Institute, Wisconsin)

U.S. Appeals Court
PUBLICATIONS
"PUBLISHER ONLY"
RULE

Jones v. Salt Lake County, 503 F.3d 1147 (10th Cir. 2007). County jail prisoners and a legal publication for prisoners filed § 1983 suits against county jails, county officials, and a state Department of Corrections (DOC), challenging the constitutionality of mail regulations in the jails and state prisons. The district court dismissed the actions and the plaintiffs appealed. The two actions were consolidated for appeal. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) a jail regulation banning prisoners' receipt of technical and sexually explicit publications did not violate the First Amendment; (2) the jail regulation barring prisoners from ordering books from the outside did not violate the First Amendment; and (3) the prison's refusal to accept legal publications did not amount to a violation of prisoners' First Amendment or due process rights where the refusal to accept the magazines was not based on any prison policy, but was due to a prison mailroom personnel's negligence. The court remanded the case to the district court to conduct a four-part Turner analysis of the validity of the county jail's ban on prisoners' receipt of all catalogs. The court held that the regulation banning ordering books from outside was reasonably related to the jail's legitimate penological goal of security, as it prevented contraband from being smuggled into the jail, and that prisoners had access to thousands of paperbacks through the jail library, prisoners could request permission to order books directly from a publisher, prisoners could also obtain paperback books donated to them through a program at local bookstore, prisoners had access to other reading materials such as newspapers and certain magazines. The court noted that allowing prisoners to have unrestricted access to books from all outside sources would significantly impact jail resources. (Utah State Prison, Salt Lake County Jail and San Juan County Jail, Utah)

U.S. District Court
MEDIA ACCESS
CORRESPONDENCE
MAIL
NEWSPAPERS
REGULATIONS

Jordan v. Pugh, 504 F.Supp.2d 1109 (D.Colo. 2007). A federal inmate brought an action alleging that a prison regulation prohibiting inmates from acting as reporters or publishing under bylines violated the First Amendment. After a bench trial was held, the district court entered judgment for the inmate. The court found that the inmate had constitutional standing to raise the First Amendment challenge against the regulation, where the inmate had been punished twice for publishing under a byline. The court held that the federal Bureau of Prisons (BOP) regulation violated the First Amendment, despite the BOP's concerns of creating "big wheel" inmates who presented a security risk, a chilling effect on the performance or speech of prison staff, or permitting inmates to conduct business. The court noted that a myriad of similar publishing opportunities were available to inmates, there was no particular security risk associated with an inmate publishing under a byline in the news media that was not present with other inmate publications, the BOP had adequate authority to screen and exclude dangerous content coming into the prison, and there was no evidence linking inmates' outgoing news media correspondence to inmates conducting business. (Federal Bureau of Prisons, Administrative Maximum Unit ["ADX"], Florence, Colorado)

U.S. District Court
RELIGION
RELIGIOUS
LITERATURE

Kaufman v. Schneider, 474 F.Supp.2d 1014 (W.D.Wis. 2007). An inmate at a supermaximum security prison filed a § 1983 action alleging that prison officials violated his constitutional rights. The inmate filed a motion seeking leave to proceed in forma pauperis. The district court granted the motion in part and denied in part. The court held that the inmate's claim that he was transferred to a maximum security facility in retaliation for his decision to name a warden as a defendant in a civil rights action was not frivolous, and thus the inmate was entitled to proceed in forma pauperis in his § 1983 action, where fact issues remained as to whether the lawsuit motivated the warden's decision to transfer the inmate. The court found that the inmate's claim that prison officials violated his First Amendment free speech and free exercise rights, and violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) as a result of their decision to prohibit the inmate from possessing any written materials was not frivolous, and thus the inmate was entitled to proceed in forma pauperis. But the court held that the officials' refusal to authorize a study group for inmates who described themselves as atheists, freethinkers, humanists and "other," and those who identified themselves to prison officials as having no religious preference, did not violate the atheist inmate's First Amendment free exercise rights, absent a showing that reading books about atheism or meeting in study group with inmates of various philosophical bents constituted observation of central religious beliefs or the practices of atheism. (Wisconsin Secure Program Facility)

- U.S. District Court
RETALIATION
MEDIA ACCESS
- Montoya v. Board of County Com'rs*, 506 F.Supp.2d 434 (D.Colo. 2007). A jail inmate brought civil rights and civil rights conspiracy claims against sheriffs, a deputy sheriff, and officials of two counties alleging violation of his constitutional rights when he was tasered by a correctional officer and later transferred and placed in segregation in alleged retaliation for complaining to the press about the taser incident. The defendants moved for summary judgment and the district court granted the motion. The court held that a civil rights claim was not stated against counties and sheriffs in their official capacities for the inmate's transfer and placement in segregated confinement in alleged retaliation for his complaints to press, given the inmate's complete failure to allege any specific facts suggesting that segregation was the result of a custom or policy, rather than being simply a single act of deprivation disconnected from any wider scheme. According to the court, the county sheriffs were entitled to qualified immunity on individual capacity claims involving conspiracy to transfer and place jail inmate in protective, segregated confinement in retaliation for the exercise of his First Amendment rights, absent any indication that the sheriffs, who never communicated with each other about the transfer, were personally involved in the decision, exercised discretionary control over the decision, or failed to supervise jail administrators who actually made the transfer. (Chaffee and Park Counties, Colorado)
- U.S. District Court
PUBLICATIONS
- Moses v. Dennehy*, 523 F.Supp.2d 57 (D.Mass. 2007). Prison inmates sued a department of corrections, claiming that a regulation banning possession of sexually explicit materials violated their First Amendment rights. The department moved for summary judgment. The district court entered judgment for the department. The court held that there was a rational relationship between the regulation banning inmates' possession of sexually explicit materials and a legitimate interest in prison security. According to the court, the regulation satisfied the First Amendment requirement that alternative means of expression be provided because inmates were afforded an opportunity to receive materials on a wide range of subjects, other than those involving sexuality or nudity, and there was even an exception allowing for nude images having medical, educational, or anthropological content. According to the court, the possibility of harm to other inmates supported the validity of the regulation. The court concluded that the administration of the regulation did not violate the First Amendment, where publications known always to feature sexually explicit materials were banned outright, and others were banned following prison staff inspection of individual issues. (Massachusetts Department of Correction)
- U.S. Appeals Court
PRISONER
PUBLICATIONS
- Myron v. Terhune*, 476 F.3d 716 (9th Cir. 2007). A state prisoner brought a § 1983 action against several correctional officers and medical personnel at a prison. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed. The court found that a California prison regulation, which provided that inmates could participate in the publication and distribution of an inmate publication only with the institution head's specific approval, did not give the state prisoner a liberty interest protected by the due process clause, in participating in such a publication. (Salinas Valley State Prison, California)
- U.S. District Court
PUBLICATIONS
OBSCENITY
- Ramirez v. Pugh*, 486 F.Supp.2d 421 (M.D.Pa. 2007). An inmate at a federal minimum security correctional facility brought an action claiming that a federal statute banning the use of federal funds to distribute certain sexually explicit material to prisoners violated his First Amendment right to free speech. The district court dismissed the action. The inmate appealed. The appeals court reversed and remanded with instructions that an evidentiary hearing be held. Upon remand, the district court entered judgment in favor of the prison. The court held that the statute and accompanying regulations were reasonably related to the legitimate penological goals of rehabilitating sex offenders, rehabilitating other inmates, and preserving institutional security. The court noted that the statute, interpreted to prohibit prison inmates from receiving publicly available soft-core pornographic materials, satisfied the First Amendment requirement that it be reasonably related to the penological goal of rehabilitating sex offenders, even though sex offenders represented only 2.8% of the prison population. According to the court, the need to rehabilitate sex offenders was much more important than the rights of other inmates to view the material in question. (Allenwood Low Security Correctional Institution, Pennsylvania)
- U.S. Appeals Court
RELIGION
PRISONERS
- Spratt v. Rhode Island Dept. Of Corrections*, 482 F.3d 33 (1st.Cir. 2007). A state prison inmate sued a state corrections department, alleging that the department's policy that prohibited inmates from preaching to fellow inmates violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the department, and inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact questions as to whether the department's total ban on preaching by inmates promoted the department's compelling interest in prison security, as applied to the inmate who was an ordained minister and who had preached to fellow inmates without incident for several years. The court found that no substantial evidence was offered in support of the theory that *any* inmate preacher would be seen as an inmate leader, and that inmate leaders threatened security. The court also held that the department could not satisfy RLUIPA's "least restrictive means" requirement by making blanket statements that all alternatives to a total ban had been considered and rejected, and that any amount of inmate preaching was dangerous to institutional security. The court required the department to explain why alternative policies would be infeasible, or why they would be less effective in maintaining security. (Adult Correctional Institution, Rhode Island)
- U.S. District Court
REDRESS OF
GRIEVANCES
RETALIATION
- Wilson v. Greetan*, 571 F.Supp.2d 948 (W.D.Wis. 2007). A prisoner brought a § 1983 action against a correctional officer who issued a conduct report and an officer who presided over the prisoner's disciplinary hearing, alleging that the issuing officer retaliated against him for exercising his right to free speech and to petition the government for redress of grievances. The prisoner alleged that the presiding officer was complicit in retaliation when he found the prisoner guilty at a hearing. The district court held that there was no evidence that the presiding officer found the prisoner guilty at the hearing out of a desire to further any retaliation that may have been initiated by the issuing officer. The court noted that the presiding officer was not required to consider any evidence at the hearing. The court held that the prisoner's speech--telling the issuing officer that he was corrupt--was a matter of public concern, but the prisoner's sole motivation in telling the issuing officer that he was corrupt was not to further a purely private interest, as would undermine a free speech claim. (Green Bay Correctional Institution, Wisconsin)

- U.S. Appeals Court
FREE SPEECH
INSPECTION OF
MAIL
- Al-Amin v. Smith*, 511 F.3d 1317 (11th Cir. 2008). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials repeatedly opened his privileged attorney mail outside of his presence in violation of his rights to access to the courts and free speech. The district court denied the officials' motion for summary judgment and the officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner's constitutional right of access to the courts requires that incoming legal mail may be opened only in the inmate's presence and only to inspect for contraband. According to the court, the inmate's right to have properly marked incoming attorney mail opened only in his presence was clearly established. The court found that the lack of showing of actual injury precluded recovery on the right-of-access claim. The court held that the inmate had a free speech right to communicate with his attorneys separate from his right of access to the courts and that the pattern and practice of opening the prisoner's attorney mail outside his presence impinges on his freedom of speech. The court noted that actual injury is not required for the prisoner to state a free speech claim arising from the opening of attorney mail and that the First Amendment prohibition against opening the inmate's attorney mail outside his presence was clearly established. (Georgia State Prison)
- U.S. District Court
TELEPHONE
- Bryant v. Cortez*, 536 F.Supp.2d 1160 (C.D.Cal. 2008). A state inmate filed a § 1983 action alleging that prison officials violated his due process rights and state law by placing him in an administrative segregation unit (ASU) for eighteen months pending resolution of a disciplinary charge against him. The district court granted the officials' motion for summary judgment. The court held that the inmate's placement in ASU, and the six-month interval between reviews of the inmate's retention, did not violate due process. The court held that placement of the inmate in ASU for eighteen months was not in retaliation for the inmate's refusal to cooperate in a prison narcotics investigation, and therefore did not violate the inmate's due process rights, where prison officials kept the inmate in ASU in order to maintain the integrity of an investigation involving the inmate's mother, an unknown number of prison guards, and at least one other inmate. The court held that the inmate's loss of telephone privileges did not constitute a due process violation, given the availability of alternative means of communication by mail or in person. (California State Prison, Los Angeles County)
- U.S. Appeals Court
FREE SPEECH
- Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dept.*, 533 F.3d 780 (9th Cir. 2008). Detainees, who were anti-abortion activists who had displayed photographs of aborted fetuses on the streets outside a middle school's campus, brought a § 1983 action against a county sheriff's department, individual deputies in their individual and official capacities, and a middle school official in his individual and official capacity, alleging free speech and Fourth Amendment violations arising from their detention and the search of their vehicle. The district court dismissed or granted summary judgment for the defendants on all claims. The detainees appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court held that the Fourth Amendment was violated by the officers' 75-minute detention of the anti-abortion activists, which followed a valid Terry stop to investigate possible vehicular violations after the activists drove a "security vehicle" and truck featuring graphic photographs of aborted fetuses on public streets around the middle school. According to the court, the detention should have lasted only long enough to allow the officers to examine the security vehicle and determine whether there were outstanding warrants involving the vehicle or its occupants. (Los Angeles County Sheriff's Department, California)
- U.S. Appeals Court
FOIA- Freedom of
Information Act
- Giarratano v. Johnson*, 521 F.3d 298 (4th Cir. 2008). A state prisoner brought a § 1983 action against the director of a state Department of Corrections challenging the constitutionality of the statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA). The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the allegations were insufficient to state a claim for facial violation of the equal protection clause and were insufficient to state a claim for an "as-applied" violation of the equal protection clause. According to the court, denial of the prisoner's request for records did not violate his right to access the courts. (Red Onion State Prison, Virginia)
- U.S. District Court
CRITICISM
FREE SPEECH
- Jackson v. Onondaga County*, 549 F.Supp.2d 204 (N.D.N.Y. 2008). A jail inmate filed a pro se civil rights action against a county and two county jail deputies, alleging that his First, Eighth, and Fourteenth Amendment rights were violated as the result of filing a false disciplinary report. The district court granted summary judgment for the defendants. The court held that the inmate did not engage in protected speech, as required for a First Amendment retaliation claim, when he called a female deputy ugly and used profane language. (Onondaga County Jail, New York)
- U.S. District Court
CENSORSHIP
PUBLICATIONS
- Johnson v. Raemisch*, 557 F.Supp.2d 964 (W.D.Wis. 2008). An inmate sued prison officials under § 1983, contending that their censorship of a newsletter violated his First Amendment right to free speech. The district court held that the challenged censorship was not logically connected to a legitimate penological interest and therefore violated the inmate's First Amendment rights. The court found that many of the proffered reasons for the censorship suggested that it was the critical nature of the newsletter that prompted the decision, rather than any true interest in security or rehabilitation. According to the court, to the extent that there was a true concern for security or rehabilitation, censorship of the newsletter, which did not advocate violence or any other unlawful activity, was an exaggerated response to those concerns. The court held that the appropriate injunctive relief for a violation of the inmate's First Amendment rights in the officials' blocking the inmate's subscription to a newsletter addressing prisoner rights issues was to provide the inmate with a copy of the newsletter. (Waupun Correctional Institution, Wisconsin)
- U.S. District Court
MAIL
PUBLICATIONS
- Jordan v. Sosa*, 577 F.Supp.2d 1162 (D.Colo. 2008). A federal prisoner brought an action against a prison and officials, alleging that a prison regulation prohibiting the prisoner from receiving sexually explicit material in the mail was unconstitutional. The district court held that the regulation did not violate the prisoner's First Amendment rights nor did it violate the inmate's or publishers' due process rights. But the court found that the portion of the regulation that allowed the prison to fail to retain the rejected publication violated due process. (United States Penitentiary-Administrative Maximum, Florence, Colorado)

- U.S. Appeals Court
FREE SPEECH
OBSCENITY
- Lockett v. Suardini*, 526 F.3d 866 (6th Cir. 2008). A state prisoner sued two prison officers and two prison nurses, alleging violations of his free speech and Eighth Amendment rights. The district court entered summary judgment for the officers and nurses. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's act of calling a hearing officer a "foul and corrupted bitch" was not protected conduct. The court found that the prison officers did not use excessive force in violation of the Eighth Amendment in restraining the prisoner after he insulted a hearing officer, where the prisoner did not dispute that he was angered, bit an officer's hand, and verbally threatened the officers. The prisoner stated that the officers merely attempted to shove him down stairs and "almost" broke his glasses, and the prisoner by his own account suffered at most "minor lacerations and cuts." According to the court, the prisoner's injuries from the altercation with the officers, consisting of minor cuts and lacerations, did not create an objectively serious medical need, and any denial of medical treatment thus did not violate his Eighth Amendment rights. (Alger Max.Corr'l Facility, Michigan)
- U.S. District Court
FREE SPEECH
- Pettus v. McGinnis*, 533 F.Supp.2d 337 (W.D.N.Y. 2008). A state inmate brought a § 1983 action against New York State Department of Correctional Services (DOCS) employees, alleging they participated in a disciplinary proceeding against him which was initiated in retaliation for his having testified against a corrections officer at a disciplinary hearing involving another inmate. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison officials were entitled to qualified immunity from the prisoner's § 1983 claim, since at the time of the disciplinary proceedings against the prisoner, it was not clearly established that an inmate's act of providing testimony on behalf of another inmate at the other inmate's disciplinary hearing was protected by the First Amendment. The court found that a corrections officer's filing of an alleged false misbehavior report against the inmate did not result in an atypical and significant hardship in relation to the ordinary incidents of prison life, as required for the alleged filing to have violated the inmate's due process rights. The inmate was sentenced to 30 days in keeplock as a result of the charges against him, and the finding of guilt on the charge did not lack evidentiary support. (New York State Department of Correctional Services)
- U.S. District Court
CENSORSHIP
PUBLICATIONS
- Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D.Cal. 2008). In an action arising from a publisher's allegations that a state corrections department illegally censored its publications, the parties' settlement agreement provided that the publisher was the prevailing party for the purposes of a reasonable attorney fee award and costs. The publisher, Prison Legal News, had alleged that the California Department of Corrections and Rehabilitation (CDCR) illegally censored its publications. The publisher moved for a fee award for work performed by its counsel after the settlement agreement was executed, and for the establishment of a semi-annual fees process. The defendants opposed the motion. The district court granted the motion in part and denied in part. The court held that: (1) the allegedly minimal nature of work performed after the agreement was executed did not preclude the publisher from being the prevailing party entitled to the fee award; (2) the publisher could recover fees for time spent by its counsel on such activities as drafting press releases and responding to media inquiries; (3) clerical tasks could not be billed at the paralegal or attorney rate; (4) a reduction in the fee award was not warranted on grounds that the publisher had multiple attorneys in attendance at two telephone conferences; (5) a fee reduction was not warranted on grounds that the requested fees included hours spent on duplicative and excessive tasks; and (6) the establishment of a semi-annual fees process was not warranted. (California Department of Corrections and Rehabilitation)
- U.S. District Court
FOIA-Freedom of
Information Act
TELEPHONE
- Slinye v. Federal Bureau of Prisons*, 577 F.Supp.2d 113 (D.D.C. 2008). An inmate brought an action against the federal Bureau of Prisons (BOP) pursuant to the Freedom of Information Act (FOIA), based on his requests for a tape recording of portions of certain telephone calls. After a tape purportedly containing the inmate's side of recorded conversations was provided, the BOP moved for summary judgment, and the inmate requested that he be provided with the original recordings. The district court denied summary judgment for the BOP. The court held that summary judgment was precluded by a material issue of fact as to whether the tape of the redacted telephone conversations that was provided by the BOP left out or redacted entire portions of the inmate's conversation. (Federal Bureau of Prisons)
- U.S. Appeals Court
CORRESPONDENCE
FREE SPEECH
- Smith v. Mosley*, 532 F.3d 1270 (11th Cir. 2008). A prison inmate brought a civil rights action against a warden, assistant warden, and hearing review officer for allegedly retaliating against him for exercising his free speech rights in complaining of certain practices at the prison. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The court held that the inmate's letter to the assistant warden, complaining that prisoners like himself, with "compromised immune systems," were required to go outside in "thirty-something degree temperatures, wearing substandard clothing," and that he was given a "diet composed of 95% starch" when prison officials knew that he was diabetic, constituted a protected exercise of his free speech rights. But the court held that a reasonable jury could not find that prison officials would not have disciplined the inmate but for his having filed such grievances. The court found that objective administrators standing in the prison officials' shoes would assume that the gist of what the inmate said in his letter and the language that he employed, which "reeked of disrespect for the administrators' authority, would be noised about the prison's population and, if ignored, could seriously impede their ability to maintain order and thus achieve the institution's penological objectives." (Easterling Correctional Facility, Alabama)
- U.S. District Court
RETALIATION
- St. Louis v. Morris*, 573 F.Supp.2d 846 (D.Del. 2008). A state prison inmate brought a § 1983 action against various prison staff and officials, alleging that he was removed from his prison kitchen job in retaliation for exercising his First Amendment rights to report institutional violations. The district court granted summary judgment for the defendants. The court held that the prisoner's unsubstantiated deposition testimony concerning informal, verbal complaints he made to prison officials reporting alleged institutional violations was insufficient to defeat summary judgment. The court noted that a prisoner does not have a constitutional right to employment while an inmate. (James T. Vaughn Correctional Center, Delaware)

- U.S. District Court
RETALIATION
- Taylor v. Walker*, 537 F.Supp.2d 966 (C.D.Ill. 2008). A prisoner brought a § 1983 action against the Illinois Department of Corrections Director, a correctional center warden, and corrections officer. The district court held that summary judgment was precluded by genuine issues of material fact, including the issue of whether the corrections officer was the prisoner's work supervisor. The prisoner alleged that the officer retaliated against him for exercising his First Amendment rights by firing him from his prison job. (Hill Correctional Center, Illinois)
- U.S. District Court
OBSCENITY
- Washpon v. Parr*, 561 F.Supp.2d 394 (S.D.N.Y. 2008). An arrestee brought an action under § 1983 against court officers alleging false arrest, illegal search, malicious prosecution, denial of equal protection, excessive force, and violation of free speech. The district court granted summary judgment for the officers in part and denied in part. The court held that any restrictions on the arrestee's speech inside the courthouse were reasonable under the First Amendment in light of her admitted failure to pass through security or to comply with officers' orders to leave the building, absent evidence that government regulation of speech inside the courthouse amounted to viewpoint discrimination. At one point during the incident the arrestee allegedly "proceeded to speak in a loud manner, using profanity." (Bronx County Criminal Court, New York)
- 2009**
- U.S. District Court
HUNGER STRIKE
- Al-Adahi v. Obama*, 596 F.Supp.2d 111 (D.D.C. 2009). Aliens who were alleged enemy combatants engaging in voluntary hunger strikes while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved to enjoin measures taken as part of a forced-feeding program. The district court denied the motion. The court found that the detainees failed to show a likelihood that they would suffer irreparable harm in the absence of an order enjoining the government from using a restraint-chair in order to facilitate force-feeding them. The court noted that pursuant to the Military Commissions Act of 2006 (MCA), the district court lacked jurisdiction to consider the complaints of detained alleged enemy combatants. According to the court, the government officials who imposed various restraints on the detained alleged enemy combatants, including the use of a restraint chair, in order to facilitate force-feeding them in response to their hunger strikes, were not thereby deliberately indifferent to their Eighth Amendment rights. The court found that evidence that the detained alleged enemy combatants had assaulted medical staff and guards during attempts to force-feed them after the detainees engaged in hunger strikes, demonstrated that the government might suffer a substantial injury if the detainees' request for a preliminary injunction against the use of a restraint-chair to facilitate such feedings were granted. (U.S. Naval Base at Guantanamo Bay, Cuba)
- U.S. Appeals Court
FREE SPEECH
RETALIATION
- Bridges v. Gilbert*, 557 F.3d 541 (7th Cir. 2009). A prisoner brought a § 1983 action against prison officials alleging that they retaliated against him for providing an affidavit in a deceased inmate's mother's wrongful death action, in violation of his First Amendment rights. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court found that the prisoner stated a claim for First Amendment retaliation, but failed to state a claim for denial of access to the courts. According to the court, the prisoner stated a § 1983 claim for First Amendment retaliation by alleging that he engaged in protected speech by filing an affidavit in the wrongful death action, that he suffered retaliation through: delays in his incoming and outgoing mail; harassment by an officer kicking his cell door, turning his cell light off an on, and opening his cell trap and slamming it shut in order to startle him; unjustified disciplinary charges; and improper dismissal of his grievances. The prisoner alleged that he would not have been harassed if he had not participated in the wrongful death action. The court found that the prisoner's participation in filing the affidavit was not sufficiently connected to the deceased inmate's rights to allow the prisoner to assert a denial of access retaliation claim based on his assistance to the deceased inmate. (Wisc. Secure Program Facil.)
- U.S. District Court
CORRESPONDENCE
MARRIAGE
- Doss v. Gilkey*, 649 F.Supp.2d 905 (S.D.Ill. 2009). Federal prisoners brought an action against prison officials, alleging that the officials' failure to acknowledge the validity of their marriage and to grant them a spousal exemption to the rule that inmates could not correspond with each other violated their equal protection and due process rights. The officials moved for summary judgment. The district court granted the motion. According to the court, the prison officials' failure to acknowledge the validity of the marriage of two prisoners and to grant them a spousal exemption to the rule that inmates could not correspond with each other did not violate the prisoners' equal protection rights where there was no showing that officials singled out the prisoners based on their Islamic religion or any other improper consideration. The court found that the prison had a legitimate security interest in generally preventing unrelated prisoners from corresponding, the face of the prisoners' marriage certificate did not strictly comport with the statutory requirements, the marriage certificate was not registered, as required by state law, and there was some evidence that the marriage was not valid due to one prisoner's failure to terminate a prior marriage. (Federal Corr'l Institution, Greenville, Illinois)
- U.S. Appeals Court
COMMUNICATIONS
WITH PRISONERS
MEDIA ACCESS
- Hammer v. Ashcroft*, 570 F.3d 798 (7th Cir. 2009). A federal prisoner who was formerly on death row and was housed in a special confinement unit, filed a pro se lawsuit against various officials of the Bureau of Prisons (BOP), alleging that they violated his First Amendment and equal protection rights by enforcing a policy that prevented prisoners in a special confinement unit from giving face-to-face interviews with the media. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that the BOP policy that prevented prisoners in special confinement units at maximum security prisons from giving face-to-face or video interviews with the media did not violate the equal protection clause. According to the court, although the BOP did not prevent such media interviews with other prisoners in a less secure confinement, the policy was rationally related to the BOP's need for greater security in situations involving prisoners in special confinement units in maximum security prisons, since media attention could increase tensions among prisoners, leading to an increased risk of violence among the more violent prisoners. The court found that the BOP did not violate the prisoner's free speech rights where the policy was rationally related to the prison's need for greater security in situations involving prisoners in special confinement units in maximum security prisons, since media attention could increase tensions among prisoners, glamorize violence, and promote celebrity, leading to an increased risk of violence. The court noted that the BOP did allow correspondence from prisoners in special confinement units to media representatives, prisoners were free to file lawsuits, and correspondence sent to courts and attorneys by prisoners could not be censored. ("Special Confinement Unit," U.S. Penitentiary, Terre Haute, Indiana)

- U.S. District Court
MAIL
TELEPHONE
VISITS
- Johnson v. Boyd*, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. The court held that the prisoner stated a free exercise of religion claim under the First Amendment by alleging that detention center personnel prevented him from practicing the central tenet of his faith of regularly reading his Bible for 19 days while he was in protective custody. According to the court, the prisoner's First Amendment freedom of association and speech rights had not been violated by denial of his visitation, phone, and mailing privileges for two days as the direct result of the prisoner committing a disciplinary infraction while he was in protective custody. (Crittenden County Detention Center, Arkansas)
- U.S. Appeals Court
MAIL
- Jones v. Caruso*, 569 F.3d 258 (6th Cir. 2009). State prison officials filed a motion to reconsider an order enjoining them from enforcing a rule preventing prisoners from possessing books, pamphlets, forms or other material regarding actions that could be taken under Uniform Commercial Code (UCC). The district court denied the motion, and the prison officials appealed. The appeals court affirmed and remanded. The appeals court held that the letter which the prisoner attempted to mail to the Michigan Secretary of State's office, requesting information about copyrighting and trademark registration in Michigan, was not "legal mail," and thus its confiscation pursuant to the prison regulation was not subject to heightened review under the First Amendment. But the court found that the prisoner was likely to succeed on the merits of his First Amendment claim and the balancing of the relevant factors favored issuance of a preliminary injunction. The court noted that the harms that prisoners would face from the enforcement of the rule outweighed those which the prison defendants would face if the court upheld the injunction, and public interest in preventing prisoners' abusive filings would not be harmed by the preliminary injunction. (Saginaw Correctional Facility, Michigan)
- U.S. District Court
FORMER
PRISONERS
NEWSPAPERS
RETALIATION
- Kantamanto v. King*, 651 F.Supp.2d 313 (E.D.Pa. 2009). A former prisoner brought an action against a prison commissioner, deputy warden, and correctional officer, alleging that he was terminated from his prison law library job in retaliation for his publication of an article critical of prison conditions, in violation of his speech and due process rights. The court granted summary judgment for the defendants in part, and denied in part. The court held that the alleged termination by the correctional officer of the prisoner from his law library job, if proven, was an adverse action, but the prisoner did not have a protected liberty or property interest in his job arising directly from the Due Process Clause. The court held that summary judgment for the defendants was precluded by genuine issues of material fact as to: (1) whether any termination of the prisoner from his law library job by a correctional officer was in retaliation for the prisoner's exercise of his free speech rights, through publishing an article about prison conditions in a newspaper; and (2) whether the alleged reason for terminating the prisoner from his law library job, i.e., that his "close custody" status did not permit him to work in the law library, was a pretext for terminating him for exercising his speech rights. The court also held that a prison policy outlining the job termination and reassignment process did not create a liberty interest in such a job. (Curran-Fromhold Correctional Facility, Philadelphia, Pennsylvania)
- U.S. Appeals Court
CENSORSHIP
PUBLICATIONS
- Mays v. Springborn*, 575 F.3d 643 (7th Cir. 2009). A prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleged retaliation for his complaints about the searches, denial of his request for dietary supplements which he considered to be religious necessities, alleged inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prison's censorship of a magazine mailed to the prisoner, by removing an article that described a prison riot and pictures of people believed to have been making gang signs, was reasonable, even if the prisoner had access to other writings and to television shows about prison riots. (Stateville Correctional Center, Illinois)
- U.S. Appeals Court
NEWSPAPERS
- Michtavi v. New York Daily News*, 587 F.3d 551 (2nd Cir. 2009). A prisoner brought a pro se action against newspaper publishers, asserting state-law claims for defamation and intentional infliction of emotional distress. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that a newspaper report claiming that the prisoner incarcerated on narcotics charges planned to cooperate with prosecutors was not defamatory under New York law. According to the court, right-thinking persons would not think ill of the prisoner for legitimately cooperating with law enforcement. (New York Daily News)
- U.S. District Court
CONVERSATION
FOIA-Freedom of
Information Act
TELEPHONE
- Milton v. U.S. Dept. of Justice*, 596 F.Supp.2d 63 (D.D.C. 2009). A prisoner filed a pro se complaint, under the Freedom of Information Act (FOIA), seeking recordings of telephone conversations that he made from the prison to others. The district court granted summary judgment in favor of the Department of Justice. The court held that the recordings were exempt from disclosure as personnel and medical files and similar files due to the invasion of privacy of third parties to conversations. The court also found that the recordings were exempt from disclosure as records compiled for law enforcement purposes, disclosure of which would invade the privacy of third parties to conversations. The court noted that the prisoner failed to tender signed waivers from the third parties to the conversations, and failed to offer a public interest rationale for overcoming the third parties' privacy interests. (U.S. Dept. of Justice, Wash. D.C.)
- U.S. Appeals Court
FREE SPEECH
PRISONER WORK
STOPPAGE
- Pilgrim v. Luther*, 571 F.3d 201 (2nd Cir. 2009). A prisoner, appearing pro se, brought an action against three prison officials alleging they violated his constitutional rights to free speech and due process of law in the course of an investigation and disciplinary hearing related to a pamphlet allegedly written by the prisoner, which encouraged inmates to engage in work stoppages. The district court granted the prison officials' motion for summary judgment. The prisoner appealed. The appeals court affirmed. The court held that entreaties to work stoppages, like petitions protesting prison conditions, are not entitled to First Amendment protection where other less disruptive means of airing grievances

are available. According to the court, work stoppages are deliberate disruptions of the regular order of the prison environment and are a species of organized union activity, which are plainly inconsistent with the legitimate objectives of a prison organization. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
COMMUNICATION
MAIL
VISITORS

Samford v. Dretke, 562 F.3d 674 (5th Cir. 2009). A state prison inmate brought an in forma pauperis § 1983 action against a corrections official, alleging that a prohibition against any communication between the inmate and his sons constituted a violation of his First Amendment rights to freedom of speech and association. The district court dismissed the petition and the inmate appealed. The appeals court affirmed. The court held that the enforcement of a “negative mail list” that included the inmate’s sons did not unduly infringe upon the inmate’s First Amendment rights, and the officials’ removal of the inmate’s sons from the approved visitors list was reasonable. The court found that the restriction was rationally related to the prison’s legitimate interest in protecting crime victims and their families from unwanted communications, given the inmate’s wife’s request that the sons be placed on the list and the fact that the inmate had been imprisoned after violating a probation condition of no contact with the sons. The court noted that an alternate means of communication remained open via the inmate’s mother. (Texas Department of Criminal Justice)

U.S. District Court
CENSORSHIP
MAIL

Sikorski v. Whorton, 631 F.Supp.2d 1327 (D.Nev. 2009). A state prisoner and his mother and sister brought a § 1983 action against prison officials and correctional officers, alleging violation of their First and Fourteenth Amendment rights by censoring, refusing to deliver, and returning various pieces of mail addressed to the prisoner and failing to provide them with notice and the opportunity to appeal their decisions. The prisoner also alleged that officials retaliated against him for his use of the prison grievance system. The court held that the prison’s policy of not allowing inmates names and addresses of private citizens without express, informed consent of the citizens did not violate the First Amendment rights of the prisoner who was issued an “unauthorized mail notification” relating to a citizens’ petition for recommendations regarding parole and sentencing procedures, which was forwarded to the prisoner by a third-party. According to the court, there was a valid, rational connection between the policy and a legitimate governmental interest of protecting citizens, there were alternative means of exercising rights that remained open to the prisoner, accommodation of the asserted rights would have had a significant impact on guards and other inmates, and on the allocation of prison resources generally, and that there were no alternatives to the policy. The court found that the prison’s practice of returning mail to the sender unopened when such mail contained tape or stickers did not violate the First Amendment where the policy was rationally related to a legitimate governmental interest in preventing illegal chemical drugs from coming into the prison. The court held that the prison’s policy of not giving notice and the opportunity to appeal to inmates regarding mail that was returned to the sender because of noticeable violations on the outside of the envelope did not violate the First Amendment or due process. The court noted that providing the accommodation of giving notice and opportunity to appeal for every piece of mail with a noticeable violation would have placed a significant burden on prison resources. (Nevada State Prison)

U.S. Appeals Court
VOTING

Simmons v. Galvin, 575 F.3d 24 (1st Cir. 2009). Incarcerated felons brought an action challenging the validity of an amendment to the Massachusetts constitution disqualifying currently incarcerated inmates from voting in all Massachusetts elections. The district court denied the Commonwealth’s motion for the entry of judgment on the pleadings on the inmates’ Voting Rights Act (VRA) claim but granted the Commonwealth’s motion for summary judgment on the inmates’ Ex Post Facto Clause claim. Both the Commonwealth and inmates appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the vote denial claim challenging the amendment that would disenfranchise incarcerated felons was not cognizable under the Voting Rights Act (VRA). According to the court, the Act was not meant to proscribe the authority of states to disenfranchise imprisoned felons. The court found that the amendment did not violate the Ex Post Facto Clause where the amendment did not impose any affirmative disability or restraint, physical or otherwise, and felon disenfranchisement had historically not been regarded as punitive in the United States. The court noted that there was a rational non-punitive purpose for the disenfranchisement. (Massachusetts)

U.S. District Court
CONVERSATION
EAVESDROPPING
PRIVACY
VISITS

Sparks v. Seltzer, 607 F.Supp.2d 437 (E.D.N.Y. 2009). A psychiatric patient, on behalf of himself and all others similarly situated, brought a § 1983 action against a director and a treatment team leader at a psychiatric center in a New York state psychiatric hospital. The patient was housed in an inpatient, long-term locked ward which normally houses a mixture of voluntary patients, patients who have been involuntarily committed under the civil law, and patients committed as a result of a verdict of not guilty by reason of mental disease or defect or a finding of incompetence to stand trial. The patient alleged violations of his First Amendment rights and his “zone of privacy” concerning a supervised visitation policy. The district court granted summary judgment for the defendants. The court held that the psychiatric patients’ speech during supervised visits at a state psychiatric hospital was not wholly unprotected by the First Amendment, although the speech was casual and among family members or friends. According to the court, the reluctance of psychiatric patients in the state psychiatric hospital to discuss various matters within the earshot of a supervising guard during supervised visitation did not give rise to a cognizable injury to their free speech rights. The court noted that no patient had lost privileges, had the term of involuntary hospitalization extended, or had otherwise been punished or threatened with being punished for anything he or a visitor had said in a supervised visit. Patients were not required to speak loudly enough to be heard, guards did not generally report the contents of conversations to hospital authorities, and no sound recordings of the visits were made. The court held that the state psychiatric hospital’s supervised visitation policy imposed upon patients did not invade their “zone of privacy” in violation of the Fourth Amendment, since patients had no reasonable expectation of privacy in a hospital visiting room which could be entered by anyone during a visit and which was used by more than one patient at a time for visits. The court found that the supervised visitation policy did not, on its face or applied to patients, infringe upon their privacy rights under the Fourteenth Amendment. (Creedmoor Psychiatric Center, New York)

- U.S. District Court
RELIGIOUS
LITERATURE
- Ciempa v. Jones*, 745 F.Supp.2d 1171 (N.D.Okla. 2010). An inmate brought claims against state prison officials under § 1983 for alleged violations of the First, Fourth, and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that prison officials did not violate the inmate's First Amendment right to free exercise of religion, RLUIPA, the inmate's due process rights, or equal protection, by denying him access to particular issues of a religious publication based on guidelines prohibiting publications that advocate terrorism, criminal behavior, racial, religious, or national hatred. According to the court, the guidelines were reasonably related to the legitimate penological goal of maintaining order and security, individual review of incoming publications was a rational means of achieving that goal and did not deprive the inmate of all means of exercising his religion, and allowing such materials would have a significant negative impact on other inmates and guards. The court also found no violation from the officials' denial of access to a book containing instructions for scaling walls, traveling under or over barbed wire, and combat techniques, since preventing the book was the least restrictive means of ensuring that the inmate did not receive information that would facilitate violence or escape. But the court held that the officials failed to meet their burden to show that prohibiting a book about the warrior ethos and the history of stoicism in the military was the least restrictive means of achieving a compelling interest, as required for summary judgment on the inmate's RLUIPA claim. (Dick Conner Correctional Center, Jess Dunn Correctional Center, Oklahoma)
- U.S. District Court
CENSORSHIP
BOOKS
- Couch v. Jabe*, 737 F.Supp.2d 561 (W.D.Va. 2010). An inmate, proceeding pro se, brought a § 1983 action claiming that prison officials violated his First and Fourteenth Amendment rights when they applied a Virginia Department of Corrections (VDOC) regulation to exclude the books *Ulysses* and *Lady Chatterley's Lover* from the prison library and prevented him from ordering those books from a private, approved vendor. The parties cross-moved for summary judgment. The district granted the inmate's motion, finding that the regulation violated the First Amendment, and that injunctive relief was warranted. The court held that the regulation was not reasonably related to legitimate penological interests, and thus, was overbroad, in violation of the First Amendment. The court noted that legitimate government interests in security, discipline, good order and offender rehabilitation were not rationally related to the regulation, which forbid all "explicit ... descriptions of sexual acts" including "sexual acts in violation of state or federal law," and encompassed much of the world's finest literature, but did not extend to "soft core" pornography. According to the court, while the inmate had no right to a general purpose reading library under the First Amendment, where the Virginia Department of Corrections (VDOC) decided to provide a general literary library to offenders, VDOC officials were constrained by the First Amendment in how they regulated the library. The court concluded that the appropriate remedy following a determination that the First Amendment was violated by a prison regulation, which excluded the books *Ulysses* and *Lady Chatterley's Lover* from a prison library, was injunctive relief against the enforcement and application of the regulation. (Augusta Correctional Center, Virginia)
- U.S. Appeals Court
PRISONER
PUBLICATIONS
REGULATIONS
- Farid v. Ellen*, 593 F.3d 233 (2nd Cir. 2010). A state prisoner brought suit against correctional officials under § 1983, alleging that he was deprived of rights protected by the First Amendment when he was disciplined by prison officials for possessing and distributing a booklet of which he was the principal author. The district court granted in part and denied in part the parties' summary judgment motions. The parties appealed and cross-appealed. The appeals court affirmed in part and vacated and remanded in part. The court held that the prison disciplinary rule prohibiting contraband was unconstitutionally vague as applied to the state prisoner. The prisoner was disciplined for possessing and distributing a brochure that violated an inmate group's internal bylaws by not having been approved by the group's staff advisor. The court noted that the bylaws did not indicate that violation of the group's bylaws constituted a violation of the prison contraband rule, thus exposing the prisoner to far greater penalties than the group could have imposed, and prison rules conferred almost complete enforcement discretion on prison officials. According to the court, the prisoner's right to not be punished under prison rules for violation of an inmate group's internal bylaws was clearly established, weighing against the prison officials' claim of qualified immunity in the § 1983 action. The court noted that the essence of constitutional prohibitions on vagueness was that the rules must give notice of conduct that they, rather than another set of rules, prohibit and must constrain discretion of officials who apply them. The court held that summary judgment was precluded by genuine issues of material fact as to whether state prison officials actually intended to punish the prisoner under the prison's contraband rule or for violating an internal bylaw of an inmate group. (Woodbourne Correctional Facility, Clinton Correctional Facility, New York)
- U.S. Appeals Court
VOTING
- Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010). Convicted felons filed a suit challenging the State of Washington's felon disenfranchisement law, alleging that it violated the Voting Rights Act (VRA) by denying the right to vote on account of race. The district court granted Washington summary judgment, and the felons appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, the district court again granted Washington summary judgment. The felons appealed again. The appeals court found that a VRA challenge to the felon disenfranchisement law requires intentional discrimination in the criminal justice system, and Washington's disenfranchisement law did not violate the VRA. (State of Washington)
- U.S. Appeals Court
MAIL
- Gee v. Pacheco*, 627 F.3d 1178 (10th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court dismissed the complaint with prejudice. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's allegations that a prison official intentionally confiscated and destroyed letters sent to him by persons outside the prison "under the guise" of sticker and perfume violations, for the purpose of harassing him, were sufficient to plead violations of his First Amendment speech rights. The court also found that the prisoner's allegations that a prison official returned to him outgoing letters that had "appropriate postage affixed without reason" for failure to mail them, were sufficient to plead a violation of the prisoner's First Amendment speech rights. The court found an alleged First Amendment speech rights violation with the prisoner's allegations that he was given a letter from his sister and that it was confiscated from him due to his incommunicado status, but that it was never returned to him. (Wyoming State Penitentiary)

U.S. Appeals Court
VOTING

Johnson v. Bredesen, 624 F.3d 742 (6th Cir. 2010). Several convicted felons brought action against Tennessee's governor and secretary of state, state coordinator of elections, and several county elections administrators, alleging that, by conditioning restoration of felons' voting rights on payment of court-ordered victim restitution and child support obligations, Tennessee's voter re-enfranchisement statute violated the Equal Protection Clause, the Twenty-Fourth Amendment, and the Ex Post Facto and Privileges and Immunities Clauses of the federal and state constitutions. The district court granted the defendants' motion for judgment on the pleadings and the felons appealed. The appeals court affirmed. The court held that Tennessee had rational basis for the challenged provisions of the state's re-enfranchisement statute, the challenged provisions of the state's re-enfranchisement statute did not violate the Twenty-Fourth Amendment or Privileges and Immunities Clause, and the challenged provisions were not punitive in nature, and thus did not violate the state's Ex Post Facto Clause. The court noted that the felons, having lost their voting rights upon being convicted of felonies, lacked any fundamental interest in their right to vote, and wealth-based classifications did not constitute discrimination against any suspect class. According to the court, Tennessee's interests in encouraging payment of child support and compliance with court orders, and in requiring felons to complete their entire sentences, including paying victim restitution, supplied a rational basis sufficient for the challenged provisions to pass equal protection muster. (Shelby County, Madison County, and Davidson County, Tennessee)

U.S. District Court
RELIGION
RETALIATION

Rupe v. Cate, 688 F.Supp.2d 1035 (E.D.Cal. 2010). A state prisoner brought an action against prison officials for violation of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials failed to accommodate his Druid religious practices and retaliated against him for protected activities. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner pled sufficient facts to state a claim against prison officials on a theory of supervisor liability under § 1983 by alleging that he wrote to the officials about violations of his rights, that the officials were "made completely aware of the inappropriate actions of their subordinates," and that they "actively chose to be deliberately indifferent to these actions." The court found that the prisoner's claims for injunctive relief based on the California Department of Corrections' (DOC) alleged systemic discrimination against those practicing the Pagan religion were not moot, even though he had been transferred from the prison where many of the alleged violations of his rights occurred, where he was still incarcerated in a prison run by the DOC. The court held that the prisoner's claims for damages under RLUIPA against state prison officials in their official capacity were barred by Eleventh Amendment sovereign immunity, since RLUIPA did not provide a clear statement requiring states to waive immunity from liability for money damages. According to the court, the issue of whether prison officials violated the prisoner's rights under the Free Exercise Clause by failing to reasonably accommodate his Druid religious faith could not be resolved at the motion to dismiss phase because of factual disputes as to what interest justified the officials' alleged failure, the existing and potential alternatives for Druid religious exercise, and the impact of requested accommodations on prison officials and other inmates. The court found that the prisoner stated claim for retaliation by prison officials for conduct protected by the Free Exercise Clause by alleging that he was strip-searched as harassment for writing letters to prison and government officials in which he complained about the lack of accommodations for his religion. The prisoner also alleged that officials conspired to place him in administrative segregation and ultimately to transfer him to requite his complaints about their previous adverse actions against him, and that the actions taken against him were motivated solely by the officials' desire to inhibit his religious worship. The court found that the prisoner stated a claim against prison officials for violation of his right to equal protection by alleging that he and other Pagans were denied opportunities to practice their religion that were available to mainstream religions and that the officials engaged in a pattern of discrimination against Pagan practitioners. (Mule Creek State Prison, California Department of Corrections)

U.S. Appeals Court
PRISONER
ASSOCIATIONS
FREE SPEECH
PRISONER
PUBLICATIONS

Singer v. Raemisch, 593 F.3d 529 (7th Cir. 2010). An inmate, whose books, magazines and manuscript about the fantasy role-playing game Dungeons and Dragons were confiscated by prison officials under a prison's policy banning fantasy games, filed a § 1983 action alleging violation of his First Amendment right to free speech. The district court granted the defendants summary judgment. The inmate appealed. The appeals court affirmed. The court held that despite the inmate's contention that a fantasy role-playing game had never incited prison violence or motivated devotees to form stereotypical street or prison gangs in the past, prison officials were rational in their belief that, if left unchecked, fantasy role-playing games could lead to gang behavior among inmates and undermine prison security in the future. The court also found that, despite the inmate's contention that fantasy role-playing games had a positive rehabilitative effect on prisoners, prison officials were rational in their belief that fantasy role-playing games could impede inmates' rehabilitation, lead to escapist tendencies or result in more dire consequences, and thus the prison ban on fantasy role-playing games did not violate the inmate's First Amendment free speech rights. The court noted that officials were concerned about potential inmate obsession with escape, both figurative and literal and based the ban on the possibility that games could foster inmates' obsession with escaping from both real life and the correctional environment, placing legitimate penological goals of prison security and inmate rehabilitation in peril. According to the court, the prison policy prohibiting possession of fantasy role-playing game manuals, strategy guides, character novellas, and other related materials was rationally related to the goal of preventing susceptible inmates from embarking upon a dangerous escapist path, and thus confiscation of the inmate's role-playing books, magazines and manuscript did not violate his First Amendment free speech rights. The court found that prison officials' ban on fantasy role-playing games and publications met the requirement that inmates have alternative means of exercising a restricted right, under the Turner test for reviewing the reasonableness of prison regulations impacting constitutional rights, since the inmate whose fantasy role-playing game materials were confiscated could express himself by writing another work of fiction, could possess other reading materials, or could engage with other inmates in allowable games. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
SEX OFFENDERS

U.S. v. Sanders, 622 F.3d 779 (7th Cir. 2010). A defendant charged with violating the Sex Offender Registration and Notification Act (SORNA) by traveling in interstate commerce without updating his sex offender registration, moved to dismiss the indictment on the grounds that SORNA's registration requirement exceeded Congressional authority under the Commerce Clause. The district court denied the motion. The appeals court affirmed, finding that SORNA did not exceed Congress' authority under the Commerce Clause. (Mississippi and Wisconsin)

U.S. District Court HUNGER STRIKE	<i>Varricchio v. County of Nassau</i> , 702 F.Supp.2d 40 (E.D.N.Y. 2010). A detainee brought a § 1983 action against a county and officials, alleging civil rights violations. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the detainee adequately alleged that he was denied his right to a speedy trial and that he was presumptively prejudiced by the delay, as required to state a § 1983 claim for a 8 th Amendment violation. The detainee alleged he was held for two years in prison prior to receiving trial for the charge of violating a protective order, and that he was subsequently found not guilty. (Nassau County Sheriff's Dept., New York)
U.S. Appeals Court CRITICISM RETALIATION	<i>Watkins v. Kasper</i> , 599 F.3d 791 (7 th Cir. 2010). A state inmate who was a prison law clerk brought a § 1983 action against a prison law librarian, alleging retaliation for the inmate's exercise of his free speech rights. Following a jury verdict for the inmate, the district court denied the librarian's motions for judgment as a matter of law or for a new trial. The librarian appealed. The appeals court reversed and remanded with instructions. The court held that the inmate law clerk's speech that criticized prison library policies requiring that clerks not help other inmates prepare their legal documents and not store the clerks' personal legal materials in the library was not protected by the First Amendment. The court found that the speech had a negative impact on the prison librarian's legitimate interests in discipline and providing efficient library services, particularly since it amounted to advocacy on behalf of other inmates, and the inmate had an alternative means to express his complaints. The court also found that the inmate law clerk's oral complaint to the prison librarian about the placement of his personal materials in the library was not protected by his First Amendment right to free speech, where the complaint was made in a confrontational, disorderly manner. (Miami Correctional Facility, Indiana)
2011	
U.S. District Court MEDIA ACCESS VISITING	<i>Battle v. A & E Television Networks, LLC</i> , 837 F.Supp.2d 767 (M.D.Tenn. 2011). A wife who had unwittingly been filmed by a television crew at a maximum security prison while visiting her husband who was an inmate there filed suit against a television producer and a television network alleging defamation/false light and intentional infliction of emotional distress (IIED) when the program was aired on the national television network. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that, under Tennessee law, the television program which aired on a national network depicting the wife visiting her inmate husband in a maximum security prison, and which contained a voice-over explaining how drugs and contraband were passed to prisoners from outsiders, was capable of a defamatory meaning, and thus the wife stated a claim for defamation/false light against the television producer and the network. According to the court, the stream of audio and visual components interacting with each other suggested that the wife was a drug smuggler, and even though the program indicated that a search of the wife revealed no drugs, the overall impression was that the wife just happened not to get caught on that particular day. But the court found that the actions of television producer and network were not so outrageous as to be beyond all bounds of decency or utterly intolerable in a civilized community, as required to support claim for intentional infliction of emotional distress, since the program could also be understood to suggest that the plaintiff had not brought drugs into the facility. The program, "The Squad: Prison Police," was aired by A & E Television Networks, LLC. (Riverbend Maximum Security Institution, Nashville, Tennessee)
U.S. Appeals Court ASSOCIATION FREE SPEECH	<i>Bustos v. A & E Television Networks</i> , 646 F.3d 762 (10 th Cir. 2011). An inmate brought an action against a television network, alleging defamation. The district court granted summary judgment in favor of the network and the inmate appealed. The appeals court affirmed. The appeals court held that the television network's statement in a broadcast that the inmate was a member of the Aryan Brotherhood prison gang was not materially false, and therefore, was not actionable for defamation under Colorado law, where the inmate engaged in recreation yard conversations with gang members, engaged in a drug smuggling conspiracy with the gang in which he would receive drug filled balloons from a visitor and distribute them to the gang, and the inmate sent a handwritten apology to the gang leader apologizing after the conspiracy failed and referred to leader repeatedly as "bro." (Supermax, Florence, Colorado)
U.S. District Court CRITICISM NEWSPAPERS	<i>Carpenter v. King</i> , 792 F.Supp.2d 29 (D.D.C. 2011). A prisoner brought a defamation action against a newspaper reporter, editor, senior editor, and owner. The defendants moved to dismiss the complaint. The district court granted the motion. The court held that the prisoner's complaint, including allegations that the reporter's newspaper article named him as carrying out death threats to murder a victim that District of Columbia court papers found the plaintiff had made, and that there were no such court papers, failed to state claim for defamation against the reporter under District of Columbia law, absent an allegation that the reporter was negligent or malicious in relying upon the sources with the knowledge when he made a reference to court papers. The court found that the newspaper reporter's writings about the conviction for which the prisoner was serving his sentence did not give rise to a cognizable claim for defamation under District of Columbia law, since news of reporting on official court proceedings was privileged. (Federal Correctional Complex, Coleman, Florida)
U.S. Appeals Court RELIGION HAIR	<i>DeMoss v. Crain</i> , 636 F.3d 145 (5 th Cir. 2011). A Texas state prisoner brought an action against the Texas Department of Criminal Justice (TDCJ) and several prison officials in their individual and official capacities, alleging that several TDCJ policies impermissibly interfered with his ability to practice his religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner also asserted several claims under § 1983, alleging that those same policies violated his constitutional rights under the First and Fourteenth Amendments. Following a bench trial, the district court entered judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that the district court did not clearly err by concluding that TDCJ's grooming policy, requiring all inmates except those with medical exceptions to be clean shaven, did not violate RLUIPA. The court found that the TDCJ policy against allowing inmates to stand for long periods of time in prison dayrooms was not a substantial burden on the exercise of religious beliefs of the prisoner whose religious practice required him to pray five times a day at set times for anywhere from four to 20 minutes, during which time he had to stand, kneel, and bow, and therefore TDCJ's dayroom policy did not violate RLUIPA. The court noted that the prisoner's ability to stand, kneel, and bow was not restricted in the recreation yard or in his cell, and he had hourly access to those locations from the dayroom. The court

held that the district court's finding, concluding that the TDCJ policy of tape-recording all inmate-led Muslim religious services to ensure that religious services take place and to aid in investigating potential disciplinary violations, did not impose a substantial burden on the prisoner's religious practice under RLUIPA. (Texas Department of Criminal Justice)

U.S. District Court
MAIL

Hamilton v. Hall, 790 F.Supp.2d 1368 (N.D.Fla. 2011). A female county jail inmate brought a class action under § 1983 against a county sheriff, challenging a jail policy requiring all outgoing mail, except legal and other privileged correspondence, to be in postcard form. The sheriff moved to dismiss. The district court denied the motion. The court held that the inmate stated a claim against the county sheriff under § 1983 for violation of her First Amendment right to freedom of speech, by alleging that the jail's policy of requiring all outgoing mail, other than legal and otherwise privileged correspondence, to be in postcard form inhibited her ability to communicate with those outside the jail. (Santa Rosa County Jail, Florida)

U.S. Appeals Court
JAIL HOUSE
LAWYER
RETALIATION

Hannon v. Beard, 645 F.3d 45 (1st Cir. 2011). A state inmate filed a § 1983 action against the secretary of a state department of corrections, alleging that he was transferred to an out-of-state prison in retaliation for his advocacy on behalf of himself and other convicts. The district court entered summary judgment in the secretary's favor, and denied the inmate's motion for reconsideration. The inmate appealed. The appeals court affirmed. The court held that the decision by the secretary to transfer the inmate to an out-of-state maximum security prison was not in retaliation for the inmate's advocacy on behalf of himself and other convicts, and thus did not violate the inmate's First Amendment free speech rights, even though the inmate had not received any misconduct reports in the fourteen years before transfer, and posed no danger to staff or other prisoners. According to the court, the initial decision to transfer the inmate was made three years before the secretary assumed his current position, the inmate had accumulated a large number of legitimate separations while incarcerated in the state prison system, and the transfer did not violate any standard prison policies or procedures. (Pennsylvania Department of Corrections)

U.S. Appeals Court
PUBLICATIONS

Hrdlicka v. Reniff, 631 F.3d 1044 (9th Cir. 2011). A publisher and his criminal justice publication brought two suits claiming that their First Amendment rights were being violated by the mail policies at two county jails in California that refused to distribute unsolicited copies of the publication to inmates. The district court granted summary judgment to the defendants, and the plaintiffs appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jails were justified in refusing to distribute unsolicited copies of the publication to inmates. According to the court, the facts to be considered included the degree to which allowing distribution of the publication would produce additional clutter in cells or otherwise adversely affect jail security, the extent to which the jails would be forced to expend additional resources to deliver the publication, and whether the publisher could effectively reach inmates by delivery only upon request. (Sacramento County, Butte County, California)

U.S. Appeals Court
OBSCENITY
PUBLICATIONS

Jordan v. Sosa, 654 F.3d 1012 (10th Cir. 2011). A federal inmate brought an action against Federal Bureau of Prisons (BOP) officials challenging the constitutionality of a statutory and regulatory ban on the use of federal funds to distribute to federal prisoners commercially published materials that were sexually explicit or which featured nudity. The district court entered judgment in the government's favor and the inmate appealed. The appeals court dismissed the action, finding that the action was rendered constitutionally moot by the inmate's transfer to another facility and the action was rendered prudentially moot by the transfer. (Administrative Maximum Security Facility, Federal Bureau of Prisons, Florence, Colorado)

U.S. Appeals Court
RETALIATION
FREE SPEECH

Moton v. Cowart, 631 F.3d 1337 (11th Cir. 2011). A state inmate brought a § 1983 retaliation action against a correctional captain, alleging that the captain violated his First Amendment rights when she disciplined him for filing an inmate grievance and for speaking to her in a manner she found disrespectful. The district court granted summary judgment in favor of the captain. The inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by fact issues as to: (1) the causal relationship between the inmate's grievance and the discipline that the correctional captain imposed against the inmate; and, (2) the causal relationship between the inmate's statements and discipline. The court found that the inmate's statement to the correctional captain about contacting his attorney in response to the correctional captain's failure to respond to the inmate's grievances was not inconsistent with his prisoner status or with legitimate penological objectives, and thus it was entitled to free speech protection. (Florida Department of Corrections)

U.S. District Court
CRITICISM
PUBLICATIONS
RETALIATION

Murphy v. Lockhart, 826 F.Supp.2d 1016 (E.D.Mich. 2011). An inmate at a maximum correctional facility in Michigan brought a § 1983 action against various Michigan Department of Corrections (MDOC) employees alleging that his placement in long-term and/or indefinite segregation was unconstitutional, that he was prohibited from communicating with his friends and family, and that his ability to practice his Christian religion was being hampered in violation of his First Amendment rights. The inmate also alleged that the MDOC's mail policy was unconstitutional. The defendants moved for summary judgment and for a protective order. The court held that the prisoner's statements in a published magazine article discussing an escape attempt were protected speech, and that a fact issue precluded summary judgment on the retaliation claims against the other facility's warden, resident unit manager, and assistant resident unit supervisor stemming from the prisoner's participation in that article. The Esquire Magazine article discussed security flaws at the correctional facility, detailing the prisoners' escape plan and revealing which prison staff he manipulated and how he obtained and built necessary tools to dig a tunnel. The court noted that the prisoner's statements were not directed to fellow inmates, and rather he spoke on issues relating to prison security and was critical of the conduct of Michigan Department of Corrections personnel, which resulted in his near-successful prison break.

The court found that summary judgment was precluded by a genuine issue of material fact, as to whether the defendants' proffered legitimate grounds for removing the prisoner from his coveted administrative segregation work assignment as a porter/painter/laundry worker--discovery that he possessed contraband--were a pretext to retaliate for his protected speech in the published magazine article. The court found that the alleged violation of the prisoner's right to free exercise of his religion from the rejection of a claimed religious publication, Codex Magica, was justified by the

prison's legitimate penological interest in limiting prisoners' access to books that included instructions on how to write in code. According to the court, because the prison had a valid penological interest in restricting access to the publication, which contained instructions on how to write in code, the prisoner mail regulation used to censor that book could not be unconstitutional as applied on the ground that it prevented the prisoner's access to that publication. (Ionia Maximum Correctional Facility, Kinross Correctional Facility, Standish Correctional Facility, Michigan)

U.S. Appeals Court
CORRESPONDENCE
MAIL
FREE SPEECH

Perry v. Secretary, Florida Dept. of Corrections, 664 F.3d 1359 (11th Cir. 2011). An individual who operated two pen pal services that solicited pen pals for prisoners, as well as another pen pal service, brought a civil rights action challenging the constitutionality of a Florida Department of Corrections (FDOC) rule prohibiting inmates from soliciting pen pals. The district court granted the FDOC's motion for summary judgment and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the plaintiffs, whose interests as publishers in accessing prisoners had been harmed, had standing to bring their claims, but that the FDOC rule at issue was rationally related to a legitimate penological interest. The court found that the plaintiffs had a liberty interest in accessing inmates and they were afforded constitutionally required due process. The court noted that the U.S. Supreme Court's decision in *Procunier v. Martinez* set forth a three-part test to decide whether there are proper procedural safeguards for inmate correspondence of a personal nature: (1) the inmate must receive notice of the rejection of a letter written by or addressed to him, (2) the author of the letter must be given reasonable opportunity to protest that decision, and (3) complaints must be referred to a prison official other than the person who originally disapproved the correspondence. (Florida Department of Corrections)

U.S. Appeals Court
CENSORSHIP
VOTING

Pittsburgh League of Young Voters Educ. Fund v. Port Authority of Allegheny County, 653 F.3d 290 (3rd Cir. 2011). Public-interest organizations filed a civil rights action alleging that a port authority's rejection of advertisements on buses informing ex-prisoners that they had the right to vote, and encouraging them to exercise the right, was the result of viewpoint discrimination. The district court granted judgment to the plaintiffs after a bench trial. The defendant appealed. The appeals court affirmed. The appeals court held that the district court permissibly found that the port authority did not reject the advertisement on the grounds that it was "political", that the authority's rejection of the advertisement was the result of viewpoint discrimination, and evidence that the port authority had accepted several noncommercial advertisements, but rejected the advertisement at issue, strongly suggested viewpoint discrimination. (ACLU, Pittsburgh League of Young Voters Education Fund, Port Authority of Allegheny County, Pennsylvania)

U.S. Appeals Court
CRITICISM
FREE SPEECH

Smith v. Peters, 631 F.3d 418 (7th Cir. 2011). A state prisoner brought an action against prison employees, alleging that the employees violated the Eighth Amendment by forcing him to work at hard labor in dangerous conditions, and violated the First Amendment by penalizing him for questioning the propriety of the work assignment and preparing to sue. The district court dismissed the complaint. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim against prison employees for violating his Eighth Amendment right to be free from cruel and unusual punishment by forcing him to work at hard labor in dangerous conditions. The prisoner alleged that he was assigned to uproot tree stumps in cold weather, without being given any protective gear, that he developed blisters from handling heavy tools in the cold without gloves, and that he was subjected to the risk of getting hit by the blades of the tools because they slipped from their handles as prisoners hacked away without proper training. The court found that the prisoner stated a claim against prison employees for violating his First Amendment right to free speech, by alleging that the employees penalized him for questioning the propriety of his work assignment and preparing to sue. (Branchville Correctional Facility, Indiana)

U.S. Appeals Court
PUBLICATIONS
FREE SPEECH

Van den Bosch v. Raemisch, 658 F.3d 778 (7th Cir. 2011). The publisher of a newsletter about the Wisconsin state prison system and a pro se state prisoner who wrote an article for that newsletter brought separate actions challenging a regulation imposed by the Wisconsin Department of Corrections (DOC) on distribution of incoming prisoner mail. The district court granted summary judgment in favor of the DOC officials. The plaintiffs appealed and the actions were consolidated for appeal. The appeals court affirmed. The court held that the officials' decision to bar distribution of the newsletter to prisoners did not violate the First Amendment and the officials' refusal to deliver copies of the article that the state prisoner had written to the newsletter did not violate the prisoner's First Amendment rights. The court noted that one newsletter article described the Wisconsin parole commission as totalitarian and abusers of prisoners, and another urged its readers to employ any and all tactics to bring about change in prison life, so that it was reasonable for the officials to perceive the newsletter articles as posing a potential threat to rehabilitation and security. (Wisconsin Department of Corrections, Green Bay Correctional Institution)

U.S. District Court
NEWSPAPERS
CRITICISM

Von Kahl v. Bureau of Nat. Affairs, Inc., 810 F.Supp.2d 138 (D.D.C. 2011). A prisoner brought an action against a publisher, alleging libel in the summary of his criminal case. All parties moved for summary judgment and the district court denied the motions. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the publisher's statements about the prisoner in criminal case summaries were defamatory. The court held that the publisher's summary, and clarification of its summary for the prisoner's mandamus petition following his convictions for second degree murder for involvement in the deaths of United States marshals, were not an accurate and complete report on, or a fair abridgement of, the mandamus petition. The publisher's accounts claimed the prisoner showed no contrition and had religious and philosophical beliefs that justified the murders. The court found that the fair report privilege under District of Columbia law did shield the publisher. The court noted that the statements published were attributable to the prosecutor in the underlying criminal proceeding, rather than the findings in the mandamus petition. (Bureau of National Affairs, Inc., D.C. District Court)

U.S. Appeals Court
ASSOCIATION
INTERNET
MAIL

Woods v. Commissioner of the Ind. Dept. of Corrections, 652 F.3d 745 (7th Cir. 2011). State inmates brought a class action against the Indiana Department of Corrections (IDOC), alleging violations of the First Amendment related to a regulation prohibiting advertising for pen-pals and receiving materials from websites and publications that allowed advertisements for pen-pals. The district court granted the IDOC's motion for summary judgment and the inmates appealed. The appeals court affirmed. The court held that the regulation related fairly directly to the IDOC's stated goal

of preventing fraud by limiting inmates' access to potential victims, thus weighing in favor of a finding that the regulation was reasonably related to a legitimate penological interest in the inmates' class action. The court noted that ample alternative means of communication existed regardless of the regulation, where inmates were free to obtain pen-pals through various groups that visited the prison or to cultivate contacts through other inmates, their attorneys, and by their own initiative. (Indiana Department of Corrections)

2012

- U.S. Appeals Court
EXECUTIONS
MEDIA ACCESS
PRIVACY
- Associated Press v. Otter*, 682 F.3d 821 (9th Cir. 2012). A coalition of media corporations filed a § 1983 action alleging that a state's denial of the right to witness all stages of executions violated the First Amendment. The district court denied the plaintiffs' motion for a preliminary injunction, and they appealed. The appeals court reversed and remanded, finding that the plaintiffs were likely to prevail on the merits of their claim. The court held that the plaintiffs were likely to prevail, gaining access to all steps in the execution process, beginning with the condemned prisoner's entry into the execution chamber, through insertion of intravenous lines into his body, reading of the death warrant, and pronouncement of death. The state's asserted interests in protecting the dignity of condemned prisoners and the sensibilities of their family and fellow inmates, and in protecting the identity of medical team members who participated in the execution. The court noted that the state already offended the dignity of condemned inmates and the sensibilities of their families and fellow inmates by allowing strangers to watch as they were put to death, that medical team members could wear surgical garb to mask their identities, and there was no evidence that the state was unable to recruit and retain medical team members to participate in executions. (State of Idaho)
- U.S. Appeals Court
CORRESPONDENCE
FREE SPEECH
MAIL
TELEPHONE
- Beaulieu v. Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. The court also found that the (MSOP) telephone-use policy did not violate the First Amendment free speech rights of patients who were civilly committed to MSOP. According to the court, the policy of monitoring patients' non-legal telephone calls and prohibiting incoming calls was reasonably related to MSOP's security interests in detecting and preventing crimes and maintaining a safe environment. The court upheld the 30-minute limit on the length of calls, finding it was reasonably related to the legitimate governmental interest of providing phone access to all patients, and that patients had viable alternatives by which they may exercise their First Amendment rights, including having visitors or sending or receiving mail, and patients had abused telephone privileges prior to implementation of the policy by engaging in criminal activity or other counter-therapeutic behavior by phone. (Minnesota Sex Offender Program)
- U.S. District Court
LANGUAGE
REDRESS OF
GRIEVANCES
- Brown v. Hannah*, 850 F.Supp.2d 471 (M.D.Pa. 2012). An inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The officials filed a motion to dismiss and the district court granted the motion. The district court held that: (1) the inmate did not have a liberty interest in remaining free from disciplinary confinement; (2) placement in confinement was not an atypical and significant hardship; (3) the inmate did not have a constitutionally protected right in the prison setting to use inappropriate, disrespectful, and derogatory language to a prison official; (4) rejection of his grievance was not an attempt to frustrate his ability to pursue a lawsuit; and (5) allegations were insufficient to state a conspiracy claim. (State Correctional Institution, Huntingdon, Pennsylvania)
- U.S. District Court
SEX OFFENDERS
- Doe v. Jindal*, 851 F.Supp.2d 995 (E.D.La. 2012). Individuals convicted of violating Louisiana's Crime Against Nature by Solicitation (CANS) statute brought a § 1983 action against Louisiana's Governor, Attorney General, and other state and municipal officials, challenging the statute's requirement that they register as sex offenders under Louisiana's sex offender registry law. The individuals moved for summary judgment and the district court granted the motion. The court held that the individuals were treated differently than those convicted of engaging in the same conduct under the solicitation provision of Louisiana's prostitution statute, which did not require registration as sex offender, and thus the provision of the sex offender registry law requiring individuals convicted of CANS to register as sex offenders deprived the individuals of equal protection of laws in violation of the Fourteenth Amendment. (Crime Against Nature by Solicitation Statute, Louisiana)
- U.S. District Court
INTERNET
REGULATIONS
SEX OFFENDERS
- Doe v. Jindal*, 853 F.Supp.2d 596 (M.D.La. 2012). Registered sex offenders brought an action seeking a declaration that the Louisiana statute precluding registered sex offenders from using or accessing social networking websites, chat rooms, and peer-to-peer networks was unconstitutional, and seeking injunctive relief. The district court entered judgment in favor of the plaintiffs, finding that the statute was facially overbroad and the statute was void for vagueness. The court found that a department of corrections regulation did not cure deficiencies in the statute where the regulation only applied to sex offenders who were under supervision by state probation officers, which was a limited segment of the class of persons otherwise subject to the statute. The court concluded: "Although the Act is intended to promote the legitimate and compelling state interest of protecting minors from internet predators, the near total ban on internet access imposed by the Act unreasonably restricts many ordinary activities that have become important to everyday life in today's world. The sweeping restrictions on the use of the internet for purposes completely unrelated to the activities sought to be banned by the Act impose severe and unwarranted restraints on constitutionally protected speech. More focused restrictions that are narrowly tailored to address the specific conduct sought to be proscribed should be pursued." (Louisiana)

U.S. District Court
FREE SPEECH

Gooding v. Ketcher, 838 F.Supp.2d 1231(N.D.Okla. 2012). A musician brought an action against a marshal of the Cherokee Nation and a deputy county sheriff, sheriff, casino employees, county police officer, jail employees, and a nurse, alleging false imprisonment, assault and battery, and violation of his First, Fourth, and Fourteenth Amendment rights, and seeking declaratory judgment that Oklahoma law governing flag burning and desecration was unconstitutional. The musician had been arrested and detained at a local county jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the musician's allegations that his use of an American flag during his performance at a casino was a constitutionally protected activity, that the county sheriff failed to train his deputies as to the constitutional nature of the activity, and that the sheriff adopted an unconstitutional policy and/or custom which led to the musician's arrest and imprisonment, stated a § 1983 claim against the sheriff in his individual capacity as a supervisor for violations of the musician's First, Fourth, and Fourteenth Amendment rights. The court found that the musician's allegations that the county sheriff was, at all times relevant to the musician's claims related to his arrest and imprisonment, a commissioned law enforcement officer and the duly-elected sheriff and chief policy maker for county sheriff's office, that the deputy sheriff was a commissioned law enforcement officer acting as a marshal for Cherokee Nation and a deputy sheriff for the county's sheriff's office, and that the deputy sheriff was acting as the sheriff's employee during events giving rise to the musician's claims, were sufficient to demonstrate that the sheriff was responsible for the deputy's training and supervision, as required for the musician's § 1983 inadequate training claim against county sheriff in his official capacity.

According to the court, the musician's allegations that the county had policy or custom that was the moving force behind the alleged violation of the musician's First, Fourth, and Fourteenth Amendment rights, and that the policy/custom encouraged the confinement of the musician in response to his use of an American flag during a concert for allegedly expressive purposes, stated a § 1983 claim against the county sheriff in his official capacity. The court held that the musician's allegations that the seizure and search of his person were unconstitutional because the underlying conduct for which he was seized was legal and did not provide lawful grounds upon which to base his arrest and the subsequent searches of his person, stated a § 1983 claim against the county sheriff in his official capacity. (Cherokee Casino, Rogers County Jail, Oklahoma)

U.S. Appeals Court
COMMUNICATIONS
WITH PRISONERS
MAIL

Lane v. Williams, 689 F.3d 879 (7th Cir. 2012). Convicted sex offenders who, after completing their sentences, remained in state custody as civil detainees pursuant to the Illinois Sexually Violent Persons Commitment Act, brought a § 1983 action, alleging constitutional problems with the conditions of their confinement at a treatment facility. The district court granted summary judgment to the defendants and the detainees appealed. The appeals court affirmed. The appeals court held that security restrictions on face-to-face interactions between the civil detainees held in different units within the state's treatment facility for sexually violent persons (SVP) did not constitute treatment decisions which, as a matter of due process, had to be made by health professionals, merely because the security restrictions affected treatment options. The court found that requiring the civil detainees to use United States Mail, rather than the facility's internal mail system, to send letters to detainees in the facility's other units did not violate the detainees' First Amendment associational rights, even if the facility's internal mail system was a superior means of sending letters. The court noted that commitment under the Illinois Sexually Violent Persons Commitment Act is civil and may be for purposes such as incapacitation and treatment, but not for punishment. As a general matter, persons who have been involuntarily civilly committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. (Rushville Treatment and Detention Center, Illinois)

U.S. Appeals Court
BOOKS

Munson v. Gaetz, 673 F.3d 630 (7th Cir. 2012). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by barring him from personally possessing books he had shipped to a prison. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed. The court held that the decision to prohibit the inmate from personally possessing books containing drug-related information did not violate the First Amendment, the Eighth Amendment or due process. According to the court, the state prison officials had a legitimate and neutral governmental objective of restricting prisoner access to drug-related information, despite the inmate's contention that he wanted the books to educate himself about his prescribed medications, where the prison officials made an individualized determination, and the books were available in prison library. (Il. Dept. of Corrections)

U.S. District Court
EXECUTIONS
MEDIA ACCESS
NEWSPAPERS

Philadelphia Inquirer v. Wetzel, 906 F.Supp.2d 362 (M.D.Pa. 2012). A newspaper brought an action against the secretary of a state department of corrections (DOC), alleging the First Amendment guaranteed the right to observe a prisoner's execution without obstructions. The newspaper moved for a preliminary injunction. The district court granted the motion. The court held that the historical practice in Pennsylvania indicated that the public and press traditionally enjoyed a right of access to executions and that permitting the press to view an entire execution without visual or auditory obstruction contributed to the proper functioning of the execution process. The court found that the state's significant interest in protecting the identities of employees taking part in lethal injections did not outweigh the newspaper's right of access to observe executions, and that the newspaper demonstrated that granting a preliminary injunction would not result in harm to the state. The court noted that "... allowing the press to report on the entire method of execution may promote a more informed discussion of the death penalty... and it may promote the public perception of fairness and transparency concerning the death penalty, which can only be achieved by permitting full public view of the execution.... Allowing the press to view the entire execution also provides significant community therapeutic value, as well as exposes the execution process to public scrutiny." (Pennsylvania Department of Corrections)

U.S. Appeals Court
BOOKS
CENSORSHIP
REGULATIONS

Prison Legal News v. Livingston, 683 F.3d 201 (5th Cir. 2012). A non-profit publisher of a magazine about prisoners' rights filed a § 1983 suit claiming violation of the First Amendment and the Due Process Clause by the Texas Department of Criminal Justice's (TDCJ) book censorship policy and procedures, as applied to the publisher that was prohibited from distributing five books to prisoners. The district court granted the TDCJ summary judgment. The publisher appealed. The appeals court affirmed. The court held that the TDCJ book censorship policy that prohibited the publisher's distribution of two books graphically depicting prison rape was rationally related to a legitimate penological goal of protecting prisoners from a threat to safety and security by use of descriptions as templates to commit similar rapes, and

thus, the policy as applied to the publisher's distribution of the two books to prisoners did not contravene the publisher's First Amendment right to free speech. According to the court, the TDCJ book censorship policy that prohibited the publisher's distribution of a book containing racial slurs and advocating overthrow of prisons by riot and revolt was rationally related to the legitimate penological goal of protecting the prison's safety and security from race riots, and thus, the policy as applied to the publisher's distribution of book to prisoners did not contravene the publisher's First Amendment right to free speech. The court also noted that the prison had a legitimate penological goal of protecting prisoners from the threat of violence due to the existence of race-based prison gangs and the prevalence of racial discord. The court found that the TDCJ book censorship policy that formerly prohibited the publisher's distribution of a book recounting sexual molestation of a young child was rationally related to the legitimate penological goal of protecting the prison from impairment of the rehabilitation of sex offenders and from disruptive outbursts by prisoners who were similarly victimized, and thus, the policy as applied to the publisher's distribution of the book to prisoners did not contravene the publisher's First Amendment right to free speech. The court noted that the TDCJ policy left prisoners and the publisher with ample alternatives for exercising their free speech rights by permitting prisoners to read the publisher's newsletter and the majority of books that the publisher distributed. (Prison Legal News, Texas Department of Criminal Justice)

U.S. District Court
FOIA-Freedom of
Information Act

Sieverding v. U.S. Dept. of Justice, 910 F.Supp.2d 149 (D.D.C. 2012). A litigant who had been arrested and detained for civil contempt based on abusive litigation practices brought a pro se Freedom of Information Act (FOIA), and Privacy Act claims against the Department of Justice (DOJ). The DOJ moved for summary judgment. The district court granted the motion. The court held that the litigant failed to exhaust her administrative remedies in her action to obtain documents from the United States Marshals Service (USMS) related to her arrest and detention for civil contempt. The litigant and her husband originally sued dozens of individuals and entities for damages arising out of a property dispute with her neighbors in Idaho. (U.S. Dept. of Justice, Washington, D.C.)

U.S. Appeals Court
MAIL
VOTING

Swann v. Secretary, Georgia, 668 F.3d 1285 (11th Cir. 2012). A former inmate at a county jail brought a civil rights action against a state and county officials, alleging that the officials failed to mail him a presidential absentee ballot at the jail. The district court granted summary judgment in favor of the defendants. The former inmate appealed. The appeals court vacated and remanded with instructions. The appeals court held that the former inmate lacked standing to bring an action against county officials for their failure to mail him an absentee ballot for the presidential election at the county jail, where the inmate's non-receipt of a ballot was not fairly traceable to any action of the officials, but only to inmate's own conduct, since the inmate failed to provide the address of the jail on his absentee ballot application. (DeKalb County Jail, Georgia)

U.S. District Court
LANGUAGE
RELIGION

Sweet v. Northern Neck Regional Jail, 857 F.Supp.2d 595 (E.D.Va. 2012). An inmate, proceeding in forma pauperis, brought a § 1983 action against a sergeant and a jail, alleging that a prohibition against speaking in Arabic during prayer violated his First Amendment rights. The district court dismissed the case. The court held that the jail policy requiring prayers or services be spoken in English when inmates from different housing units and classification levels congregated, but allowing prayers to be offered in Arabic within individual housing units, was reasonably related to legitimate penological interests of security and did not substantially burden inmates' right to free exercise of their First Amendment rights. The court noted that the jail was concerned about inmates plotting riots or escapes while congregating with other units, jail officers did not speak Arabic, and inmates could gather within their housing units and pray in Arabic. (Northern Neck Regional Jail, Virginia)

U.S. Appeals Court
BOOKS
FREE SPEECH
LITERATURE

Toston v. Thurmer, 689 F.3d 828 (7th Cir. 2012). A state prison inmate brought a pro se civil rights complaint under § 1983 against prison officials, alleging that his rights of free speech and due process were violated when a disciplinary proceeding found him guilty of possession of gang literature and sentenced him to 90 days confinement in segregation. The inmate's due process claim was dismissed, and the district court granted summary judgment for officials on the free speech claim. The inmate appealed. The appeals court affirmed in part and vacated in part. The appeals court held that the limitation of the state prison inmate's right of free speech, as a result of a disciplinary proceeding that found him guilty of possession of gang literature, was adequately justified by prison officials' legitimate concern that the inmate copied from a prison library book a ten-point program by the founder of a hate group's predecessor in order to show it to others that the inmate hoped to enlist in a prison gang, with the program to serve as the gang's charter. The court noted that a prison librarian's decision that on the whole a book is not gang literature does not preclude disciplinary proceedings against an inmate who copies incendiary passages from it. The inmate had purchased, with prison permission, "To Die for the People: The Writings of Huey P. Newton" the founder of the Black Panthers, and he had checked out two books from the prison library about the Black Panthers. The court vacated the district court decision regarding the alleged due process violation. The inmate alleged that his due process rights were violated because he had no notice that copying passages from prison library books or a book he had been allowed to purchase could subject him to a sentence of 90 days' confinement in segregation for possessing gang literature. The appeal court ordered the district court to determine whether a 90-day sentence to segregation was, or was not, a deprivation of liberty. (Waupun Correctional Institution, Wisconsin)

2013

U.S. District Court
COMMUNICATIONS
WITH PRISONERS
CORRESPONDENCE
RETALIATION

Aref v. Holder, 953 F.Supp.2d 133 (D.D.C. 2013). Current and former prisoners brought an action against the Bureau of Prisons (BOP), BOP officials, and the Attorney General, claiming that their First and Fifth Amendment rights were violated when they were placed in Communications Management Units (CMUs), in which their ability to communicate with the outside world was seriously restricted. Following dismissal of all but the procedural due process and First Amendment retaliation claims, the defendants moved to dismiss the First Amendment claims. The district court granted the motion in part and denied in part. The court held that: (1) the prisoner's release from BOP custody rendered moot his official-capacity claims for equitable relief; (2) a second prisoner sufficiently alleged a First Amendment retaliation claim; but (3) the Prison Litigation Reform Act (PLRA) barred the prisoners' individual-capacity claims against a BOP official for mental or emotional injury. (Federal Correctional Institutions in Terre Haute, Indiana, and Marion, Illinois)

U.S. District Court CRITICISM RETALIATION	<p><i>Benton v. Rousseau</i>, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate; and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to \$45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a \$12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of \$15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)</p>
U.S. District Court ASSOCIATION FORMER PRISONERS FAMILY REGULATIONS	<p><i>Corso v. Fischer</i>, 983 F.Supp.2d 320 (S.D.N.Y. 2013). A correctional officer brought an action against the Commissioner of the New York Department of Corrections and Community Supervision's (DOCCS), alleging DOCCS's work rule prohibiting personal association of DOCCS employees with current and former inmates and their associates was overbroad, in violation of the First Amendment. The parties cross-moved for summary judgment. The district court granted the officer's motion. The court held that the work rule was facially overbroad in violation of the First Amendment, where DOCCS had enforced the rule against the officer and denied her the right to associate with her former husband and the father of her grandchild. The court found that the rule was not narrowly tailored to further the State's compelling interest in maintaining safe and orderly administration of its prisons, as applied to constitutionally protected close familial relationships, and thus, did not withstand strict scrutiny on the First Amendment overbreadth claim. The court noted that the rule provided no temporal or geographical limitation with respect to the former inmate's incarceration, nor did its prohibition account for variations in the seriousness of that person's offense or his or her prison disciplinary history. The court found that the rule was substantially overbroad, in violation of the First Amendment, as applied to close familial relationships, where the rule would prevent a DOCCS employee from visiting, or even corresponding with an incarcerated spouse if the couple had no children or if their children did not maintain a relationship with the incarcerated parent, and the rule prohibited employees from ever reestablishing contact with a spouse, child, sibling, or parent when that person was released and became a "former inmate." (New York State Department of Corrections and Community Supervision)</p>
U.S. District Court FOIA- Freedom of Information Act	<p><i>Davidson v. Bureau of Prisons</i>, 931 F.Supp.2d 770 (E.D.Ky. 2013). A federal prisoner brought a Freedom of Information Act (FOIA) suit against the federal Bureau of Prisons (BOP) seeking the results of an audit of his prison that had been conducted by the American Correctional Association. Following dismissal of his suit, the prisoner moved for reconsideration and for an award of costs. The court held that the prisoner was not entitled to judicial relief given that the BOP had compiled the responsive documents and was awaiting only payment of the \$33 copying charge. The court found that the prisoner had substantially prevailed and was thus eligible to recover his litigation costs, and that the prisoner was only entitled to recover his \$350 filing fee. There had been a two-year delay in the BOP's response. (Federal Medical Center, Lexington, Kentucky)</p>
U.S. District Court HUNGER STRIKE	<p><i>Dhiab v. Obama</i>, 952 F.Supp.2d 154 (D.D.C. 2013). An alien who was engaged in a voluntary hunger strike while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved for a preliminary injunction against force-feeding him and the administration of medications related to the force-feeding without his consent. The district court denied the motion, finding that it lacked jurisdiction to consider the motion. (U.S. Naval Base at Guantanamo Bay, Cuba)</p>
U.S. Appeals Court COMMUNICATIONS WITH PRISONERS FREE SPEECH MEDIA ACCESS PRIVACY	<p><i>Doe v. Gangland Productions, Inc.</i>, 730 F.3d 946 (9th Cir. 2013). A former prison gang member brought claims of appropriation of likeness, public disclosure of private fact, false promise, and negligent and intentional infliction of emotional distress, against the producers of a documentary television series on gangs, alleging that the producers failed to conceal the member's identity in the broadcast as promised. The district court denied the producers' motion to strike the complaint under the California anti-SLAPP (Strategic Lawsuits against Public Participation) statute. The producers appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the producers' actions were in furtherance free speech rights, the producers' actions were connected with issues of public interest, the identity of the former gang member was not a topic of legitimate public concern, the broadcast of the documentary series met the public affairs exception to appropriation of likeness liability, and the producers had no legal duty not to reveal private facts about the former gang member during the broadcast. (Gangland Productions, Inc. and A & E Television Networks, California)</p>
U.S. Appeals Court RETALIATION	<p><i>Ford v. City of Yakima</i>, 706 F.3d 1188 (9th Cir. 2013). A motorist brought a § 1983 action alleging First Amendment retaliation against a city and police officers who booked and jailed the motorist following a traffic stop. The district court granted summary judgment to the defendants, and the motorist appealed. The appeals court reversed and remanded. The court held that the motorist's criticism of the police for what the motorist perceived to be an unlawful and racially motivated traffic stop was squarely within the protective umbrella of the First Amendment, and any action to punish or deter such speech was categorically prohibited by the federal constitution. The court found that the motorist's booking and jailing by the police officers, allegedly in retaliation for the motorist's criticism of what he perceived to be an unlawful and racially motivated traffic stop, would chill a person of ordinary firmness from future First Amendment activity, as required to support a § 1983 First Amendment retaliation claim against the city and the</p>

police officers. The court held that the police officers were not entitled to qualified immunity from the motorist's § 1983 claim that they booked and arrested him in violation of the First Amendment, where it was clearly established that it was unlawful to book and jail motorist in retaliation for First Amendment activity, even if probable cause existed, and a reasonable police officer would have known that it was unlawful to use his authority to retaliate against an individual because of his speech. During the traffic stop one officer said to the motorist: (1) "Stop running the mouth and listen"; (2) "If you talk over me, you are going to go to jail, sir. Do not talk over me"; (3) "If you cooperate, I may let you go with a ticket today. If you run your mouth, I will book you in jail for it. Yes, I will, and I will tow your car"; and (4) "If you cooperate and shut your mouth, I'll give you a ticket and you can go." (City of Yakima Police Department, Washington)

U.S. District Court
PHOTOGRAPHS
PUBLICATIONS
REGULATIONS

Gray v. Cannon, 974 F.Supp.2d 1150 (N.D.Ill. 2013). State inmates brought an action against prison officials, alleging that the officials' refusal to let them receive mail that included photographs depicting nudity and sexual activity violated the Free Speech Clause of the First Amendment, and that grievance procedures for challenging the refusals violated the Due Process Clause of the Fourteenth Amendment. The district court granted the officials' motion for summary judgment. The court held that a state prison regulation preventing inmates from obtaining nude or sexually explicit photographs was reasonably related to legitimate penological interests, and thus did not violate the inmates' First Amendment rights. The court noted that: (1) the regulation was expressly aimed at protecting prison security; (2) the regulation permitted withholding reading materials only if it furthered interests in security, good order, or discipline, and there existed a valid and rational connection between the regulation and prison security; (3) the prison left open alternative means of exercising the restricted right by permitting inmates to receive a wide range of publications; (4) the restrictions fell within the broad limits of deference to prison officials regarding what was detrimental to security; and (5) the inmates did not point to an alternative that fully accommodated inmates' rights at a de minimus cost to valid penological interests. The court found that there was no evidence regarding how the state prison's grievance and appeal procedures operated, as required to support the inmates' claim that they were provided with insufficient opportunities to challenge prison's rejections of sexually explicit photographs and publications sent to them, in violation of due process. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
HAIR
RELIGION

Knight v. Thompson, 723 F.3d 1275 (11th Cir. 2013). Native American inmates brought an action against the Alabama Department of Corrections, challenging its short-hair policy under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment for the Department and the inmates appealed. The appeals court affirmed. The appeals court held that the Department's short-hair policy for male inmates furthered compelling governmental interests in security, discipline, hygiene, and safety, as required to survive a challenge under RLUIPA by inmates who wished to wear their hair long in accordance with dictates of their Native American religion. The court noted that long hair was used to conceal weapons and contraband, it concealed inmates' fungus outbreaks, sores, cysts, and tumors, and it impeded the ability of prison staff to identify inmates. According to the court, allowing an exception for Native American inmates would not eliminate the Department's concerns, as inmates could manipulate searches of their own hair to conceal weapons, and it would do nothing to assuage the Department's concerns about hair-pulling during fights. The court held that the Department's short-hair policy, which applied to all male inmates without exception, did not discriminate on the basis of race or religion in violation of the Native American inmates' equal protection rights. (Alabama Department of Corrections)

U.S. District Court
BOOKS
CORRESPONDENCE
PRETRIAL
DETAINEES
RELIGIOUS
LITERATURE

Kramer v. Conway, 962 F.Supp.2d 1333 (N.D.Ga. 2013). A pretrial detainee at a county jail brought an action against the jail, the jail administrator, and a county sheriff, alleging that conditions of his confinement violated his right to practice his Orthodox Jewish faith, that the defendants violated his right to possess legal reference books, and that the defendants failed to accommodate his physical disabilities. The detainee moved for a preliminary and a permanent injunction and moved for leave to file a second amendment to his verified complaint. The defendants moved for summary judgment. The district court denied the motions in part and granted the motion in part. The court held that the pretrial detainee's allegation that the county jail denied him books needed to practice his Orthodox Jewish religious faith failed to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), absent evidence that the county jail received federal funds in connection with its policies limiting the number and type of books allowed in cells. The court held that the county jail's policy of limiting the number of religious books that the pretrial detainee, an Orthodox Jew, could keep in his cell, but providing him access to others that were not in his cell, was based on legitimate penological interests, and thus, did not violate the detainee's rights under the Free Exercise Clause. According to the court, a uniformly applied books-in-cell limitation was reasonable in a facility that housed 2,200 inmates, the limitation was applied in a neutral way and the expressive content of books was not considered, books in sufficient quantities could be used as weapons and presented fire and obstacle hazards, access to other books was made by exchanging out titles and by allowing the copying of parts or all of a text, and the detainee was not denied access to nine religious books he claimed were required in practicing his faith, but rather, argued only that access was required to be more convenient.

The court found that the jail's policy of prohibiting hard cover books in cells, including limiting religious texts to those that did not have hard covers, was based on legitimate penological interests, and thus, did not violate rights of the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause. The court noted that evidence at hearing on the detainee's motion for injunctive relief showed that hardcover books posed safety and security risks because hard covers could be used to conceal contraband and because of their potential use as weapons, the policy was applied in a neutral way, and the expressive content of books was not considered.

The court found that the jail's policy of limiting package mail to four pounds was based on legitimate penological interests, and thus, did not violate rights as applied to the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause when the jail rejected one of detainee's packages that contained more than four pounds of books. The court noted that the jail received a large volume of mail and other items each day, all of which had to be searched for contraband and threats their contents could pose to the safety and security of inmates and jail officials, the policy was applied in a neutral way, and the expressive content of books was not considered. The court held that the jail's policy that limited the number and type of books allowed in a cell did not violate the pretrial detainee's Due Process rights,

where there was no evidence that the policy was intended to punish the detainee, the jail's policies prohibiting hard cover books and limiting the number of books allowed in a cell were reasonably related to legitimate penological interests, and the jail gave the detainee substantial access to legal materials by increasing the time he was allowed in the library and liberally allowing him to copy legal materials to keep in his cell. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
NAME

Mutawakkil v. Huibregtse, 735 F.3d 524 (7th Cir. 2013). An inmate brought an action alleging that a Wisconsin prison policy that required inmates to use their committed names in conjunction with a second name unless a state court approved a change-of-name application, in violation of the First Amendment, the Equal Protection Clause, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment for the defendants and the inmate appealed. The appeals court affirmed. The appeals court held that the policy did not violate either the speech clause or the free-exercise clause of the First Amendment. The court found that the policy did not violate the Equal Protection Clause, absent an allegation that any inmate, of any race or religion, was allowed to change his name on his own say-so after being convicted. The court found that the policy did not create a substantial burden on the inmate's religious exercise, as would violate RLUIPA. The court noted that the dual name requirement served the compelling governmental interest of maintaining prison security, and the requirement was the least restrictive means of satisfying that interest. The court commented on the name of the statute: "... which often goes by the unpronounceable initialism RLUIPA but which we call 'the Act' so that the opinion can be understood by normal people." (Wisconsin Department of Corrections)

U.S. District Court
CORRESPONDENCE
TELEPHONE

Nelson v. District of Columbia, 928 F.Supp.2d 210 (D.D.C. 2013). A detainee brought a § 1983 claim against the District of Columbia arising from his stay in jail. The defendant moved to dismiss and the district court granted the motion. The court held that denial of one telephone call and access to stationery during the detainee's five-day stay in a "Safe Cell," which was located in the jail's infirmary, did not implicate his First Amendment right of free speech or right of access to courts. The court found that the detainee's alleged exposure to "dried urine on the toilet seat and floor" and garbage during his five-day stay, along with the denial of a shower, did not rise to the level of a Fifth Amendment due process violation. According to the court, placement of detainee in a Safe Cell was not motivated by a desire to punish the detainee, but rather by a nurse's desire to attend to the detainee's ailments after his "legs and back gave out" twice. The court noted that denial of the detainee's request to have the cell cleaned was for the non-punitive reason that the detainee would not be in the cell that long. (D.C. Jail, District of Columbia)

U.S. Appeals Court
PRISONER
PUBLICATIONS
REGULATIONS

Pesci v. Budz, 730 F.3d 1291 (11th Cir. 2013). A civil detainee, who was involuntarily committed as a sexually violent predator, brought a civil rights action against a facility director, claiming that the facility's policy barring residents from copying the detainee's newsletter violated his expressive freedoms under the First and Fourteenth Amendments. The district court granted final summary judgment in favor of the facility director, and the detainee appealed. The appeals court vacated and remanded. The court held that the constitutionality of the facility's policy of banning outright all possession and distribution of the detainee's newsletter should have been considered along with the facility's prior policy limiting the means of the newsletter's propagation in the ruling on the facility director's motion for summary judgment. The appeals court found that *Turner*'s rational relation standard was the appropriate standard against which to measure the detainee's First Amendment claims, however, the government could not justify limitation on the detainee's expressive freedoms based on retribution or general deterrence. (Florida Civil Commitment Center)

U.S. District Court
PUBLICATIONS
MAIL

Prison Legal News v. Babeu, 933 F.Supp.2d 1188 (D.Ariz. 2013). A non-profit organization that produced and distributed a monthly journal and books to inmates brought an action against county jail officers and mailroom employees, alleging that the defendants violated its First Amendment and due process rights by failing to deliver its materials to its subscribers at the jail. The parties cross-moved for partial summary judgment. The court granted the motions in part, denied in part, and deferred in part. The court held that the jail's policy limiting incoming inmate correspondence to one-page and postcards did not violate the First Amendment, where there was an apparent common-sense connection between the jail's goal of reducing contraband and limiting the number of pages a particular piece of correspondence contained, and sufficient alternative avenues of communication remained open for publishers who wished to communicate with inmates at the jail. But the court held that the jail's failure to give the non-profit organization notice and the opportunity to appeal the jail's refusal to deliver its materials to inmates violated the organization's procedural due process rights.

The court ruled that the blanket ban on newspapers and magazines violated clearly established law, and therefore neither the county jail mailroom employees nor their supervisors were entitled to qualified immunity from the § 1983 First Amendment claim arising from employees' failure to deliver the organization's materials to inmates. According to the court, the law was clear that blanket bans on newspapers and magazines in prisons violated the First Amendment, and it was objectively unreasonable for the employees to throw away mail, or refuse to deliver it, based upon a perceived blanket ban on newspapers and magazines. Because the county jail mailroom uniformly enforced the unconstitutional county policy and allowed books from only four publishers, the county was subject to liability for First Amendment violations in § 1983 action. The court held that there was no evidence that mailroom employees, their supervisors, or command staff at the county jail were motivated by evil motive or intent when they violated the non-profit publisher's First Amendment and due process rights by discarding publisher's materials without providing the publisher opportunity to contest or appeal the non-deliverability decision, or that those individuals' unconstitutional actions involved reckless or callous indifference to the publisher's federally protected rights, as would support an award of punitive damages against the individuals in the publisher's § 1983 action. (Pinal County Jail, Arizona)

U.S. District Court
PUBLICATIONS
MAIL

Prison Legal News v. Columbia County, 942 F.Supp.2d 1068 (D.Or. 2013). A publisher filed a § 1983 action alleging that a county and its officials violated the First Amendment by rejecting dozens of its publications and letters mailed to inmates incarcerated in its jail and violated the Fourteenth Amendment by failing to provide it or the inmates with the notice of, and opportunity to, appeal the jail's rejection of its publications and letters. A bench trial was held, resulting in a judgment for the publisher. The court held that: (1) the policy prohibiting inmates from receiving mail that was not on a postcard violated the First Amendment; (2) the county had a policy of prohibiting inmates from receiving

magazines; (3) the county failed to provide adequate notice of withholding of incoming mail by jail authorities; (4) entry of a permanent injunction prohibiting officials from enforcing the postcard-only policy was warranted; and (5) a permanent injunction prohibiting officials from enforcing the prohibition against magazines was not warranted. (Columbia County Jail, Oregon)

U.S. District Court
MAIL
PRIVACY
REGULATIONS
TELEPHONE
VISITS

Royer v. Federal Bureau of Prisons, 933 F.Supp.2d 170 (D.D.C. 2013). A federal prisoner brought an action against Bureau of Prisoners (BOP), alleging classification as a “terrorist inmate” resulted in violations of the Privacy Act and the First and Fifth Amendments. The BOP moved for summary judgment and to dismiss. The district court granted the motion in part and denied in part. The court held that BOP rules prohibiting contact visits and limiting noncontact visits and telephone time for federal inmates labeled as “terrorist inmates”, more than other inmates, had a rational connection to a legitimate government interest, for the purpose of the inmate’s action alleging the rules violated his First Amendment rights of speech and association. According to the court, the prison had an interest in monitoring the inmate’s communications and the prison isolated inmates who could pose a threat to others or to the orderly operation of the institution. The court noted that the rules did not preclude the inmate from using alternative means to communicate with his family, where the inmate could send letters, the telephone was available to him, and he could send messages through others allowed to visit.

The court found that the inmate’s assertions that the prison already had multiple cameras and hypersensitive microphones, and that officers strip searched inmates before and after contact visits, did not establish ready alternatives to a prohibition on contact visits for the inmate and limits on phone usage and noncontact visits due to being labeled as a “terrorist inmate.” The court noted that increasing the number of inmates subject to strip searches increased the cost of visitation, and microphones and cameras did not obviate all security concerns that arose from contact visits, such as covert notes or hand signals. The court held that the inmate’s allegations that he was segregated from the prison’s general population for over six years, that he was subject to restrictions on recreational, religious, and educational opportunities available to other inmates, that contact with his family was limited to one 15 minute phone call per week during business hours when his children were in school, and that he was limited to two 2-hour noncontact visits per month, were sufficient to plead harsh and atypical conditions, as required for his Fifth Amendment procedural due process claim. According to the court, the inmate’s allegations that he was taken from his cell without warning, that he was only provided an administrative detention order that stated he was being moved due to his classification, that he was eventually told he was classified as a “terrorist inmate,” that such classification imposed greater restrictions upon his confinement, and that he was never provided with a hearing, notice of criteria for release from conditions, or notice of a projected date for release from conditions were sufficient to plead denial of due process, as required for his claim alleging violations of the Fifth Amendment procedural due process. (Special Housing Units at FCI Allenwood and USP Lewisburg, CMU at FCI Terre Haute, SHU at FCI Greenville, Supermax facility at Florence, Colorado, and CMU at USP Marion)

U.S. District Court
FOIA- Freedom of
Information Act

White v. Department of Justice. 952 F.Supp.2d 213 (D.D.C. 2013). A federal prisoner brought a Freedom of Information Act (FOIA) action against the Department of Justice (DOJ) seeking records pertaining to him. Following denial of DOJ’s motion to dismiss or for summary judgment, DOJ renewed its motion for summary judgment. The district court granted the motion. The court held that: (1) DOJ conducted a search reasonably calculated to locate the responsive records; (2) Executive Office for United States Attorneys (EOUSA) had no obligation to search for the records; and (3) EOUSA properly withheld the records as attorney work-product. (U.S. Dept. of Justice, Mail Referral Unit, Washington, D.C.)

U.S. Appeals Court
VISITS

Williams v. Ozmint, 716 F.3d 801 (4th Cir. 2013). An inmate, proceeding pro se, brought a § 1983 action in state court against a warden, alleging that suspension of his visitation privileges for two years violated the First, Fifth, Eighth, and Fourteenth Amendments. Following removal to federal court, the district court granted the warden’s motion for summary judgment. The inmate appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that: (1) the inmate did not have clearly established right to visitation; (2) the inmate’s claim for injunctive relief was rendered moot when the inmate received restoration of his visitation privileges; (3) there was no evidence that the inmate would be deprived of his visitation privileges in the absence of any culpable conduct on his part; and (4) the inmate’s request for “any other relief that seems just and proper” was insufficient to state a claim for declaratory relief. (Evans Correctional Institution, South Carolina)

2014

U.S. District Court
MAIL

American Civil Liberties Union Fund of Michigan v. Livingston County, 23 F.Supp.3d 834 (E.D.Mich. 2014). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail’s postcard-only mail policy violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for preliminary injunction. The district court granted the motion. The organization had sought a preliminary injunction enjoining the jail policy of refusing to promptly deliver properly marked legal mail sent by an organization attorney and individually addressed to an inmate. The court held that there was a likelihood of success on the merits of its claim that the policy violated the First Amendment protection accorded inmates’ legal mail. The court noted that the organization sent letters in envelopes that were individually addressed to individual inmates, were labeled “legal mail,” clearly delineated that the mail came from an organization attorney, the letters asked if the inmate was interested in meeting with an organization attorney to obtain legal advice regarding the jail policy of limiting all incoming and outgoing mail to one side of a four by six–inch postcard, but the letters were not delivered. The jail opened the letters and read them, and the jail failed to notify the inmates or the organization that the letters were not delivered. (Livingston County Jail, Michigan)

U.S. District Court
MARRIAGE

Amos v. Higgins, 996 F.Supp.2d 810 (W.D.Mo. 2014). Fiances of prisoners brought an action against a county recorder of deeds, in her official capacity, asserting that a state law’s requirement that a marriage license applicant must sign the application in the presence of a recorder was unconstitutional, as applied in instances when one or both

applicants could not appear in person, or when an applicant was incarcerated. The fiancées moved for a preliminary injunction prohibiting the recorder from requiring prisoners to execute or sign their marriage license applications in her presence. The district court granted the motion. The court held that the Missouri statute requiring both applicants to execute and sign a marriage license in presence of the issuing recorder was unconstitutional as applied, and an issuance of a permanent injunction was warranted. The court noted that the “in presence” statutory requirement significantly interfered with the fiancées' exercise of their fundamental right to marry, and it was not closely tailored to solely effectuate a sufficiently important state interest, given that the identity of incarcerated marriage license applicants could be verified through other means without requiring them to sign a marriage license application in the recorder's physical presence. (Moniteau County Recorder of Deeds, Tipton Correctional Center, Missouri)

U.S. District Court
TELEPHONE

Cash v. Wetzel, 8 F.Supp.3d 644 (E.D. Pa. 2014). A prisoner brought a § 1983 action against prison officials, alleging, among other things, violations of his civil rights in connection with destruction of his legal materials. The officials moved to dismiss, and the prisoner moved for leave to file a supplemental complaint alleging retaliation, and for entry of default. The district court granted the motions in part and denied in part. The court held that the claims against officials in their official capacities were barred by the Eleventh Amendment. The court held that the allegation that two prison officials separated the prisoner from his legal materials, causing him to be unable to adequately litigate his direct appeal, stated a claim for denial of his right of access to courts. But the court found that because the prisoner did not lose a legal claim as the result of the officials' alleged withholding of the prisoner's legal material during a meeting with his attorney, the officials could not be held liable for denying the prisoner's access to courts.

According to the court, the alleged adverse actions against prisoner, including denial of his requests to make personal and legal phone calls, and statements by prison officials that “this trouble you're going through could easily go away if you would just drop the lawsuit,” that were taken by state actors, as required for the prisoner's § 1983 retaliation claim against prison officials, and were sufficient to deter a person of ordinary firmness from exercising his rights and thus constituted adverse actions.

The court found that the prisoner stated a claim under § 1983 for failure to intervene against two prison officials by alleging that the officials were present as another prison official destroyed prisoner's legal materials, and that two officials were aware of a conspiracy to deprive the prisoner of his right of access to courts, and that they did not investigate and stop the conspiracy. According to the court, a claim was also stated by allegations that two officials decided to withhold mitigation evidence from the prisoner in retaliation for bringing a lawsuit, in presence of the other official, and that each official failed to intervene in the other's withholding.

The court held that the prisoner stated a claim under § 1983 for supervisory liability against a prison official by alleging that the official acquiesced in his subordinates' removal of the prisoner's legal documents. (State Correctional Institution- Graterford, SCI-Albion, Pennsylvania)

U.S. District Court
MAIL
ADDRESS OF
GRIEVANCES
RETALIATION
INTERNET

Grenning v. Klemme, 34 F.Supp.3d 1144 (E.D.Wash. 2014). A state inmate brought a § 1983 action alleging that prison officials and employees retaliated against him, in violation of the First Amendment, for the content of letters and manuscript he authored, as well as his filing of grievances and a lawsuit. The district court granted the inmate's motion for a protective order. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate's incoming mail from his creative writing instructor and his outgoing mail to his mother were restricted by prison officials due to the legitimate penological interest of prohibiting inmates from receiving or sending sexually explicit mail, and thus the restriction of the mail did not violate the inmate's First Amendment rights. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison mailroom staff members selectively applied the foreign language mail policy as a pretext to prevent the inmate, who filed grievances, from receiving mail from his overseas parents written in Norwegian, as to whether the staff members made an effort to seek translations, and as to whether the policy as applied amounted to a de facto ban on all of the inmate's incoming non-English mail.

The court also found that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer who screened the inmate's outgoing e-mail to his family and a correctional sergeant with whom the screening officer shared the e-mail colluded to penalize the inmate for opinions expressed in the e-mail, and as to whether the actions of the screening officer and the sergeant chilled the inmate's exercise of protected rights. The court held that the correctional sergeant was not entitled to qualified immunity from the inmate's § 1983 claim that the sergeant retaliated against him, in violation of the First Amendment, when he disciplined the inmate based on disparaging remarks contained in the inmate's outgoing e-mail to his mother, where a reasonable official would have understood that punishing the inmate for the unflattering content of personal correspondence directed to another was unlawful. (Airway Heights Corrections Center, Washington)

U.S. District Court
CENSORSHIP
MAIL
NEWSPAPERS
PUBLICATIONS
SEX OFFENDERS
TELEPHONE

Karsjens v. Jesson, 6 F.Supp.3d 916 (D.Minn. 2014). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 class action against officials, alleging various claims, including failure to provide treatment, denial of the right to be free from inhumane treatment, and denial of the right to religious freedom. The patients moved for declaratory judgment and injunctive relief, and the officials moved to dismiss. The district court granted the defendants' motion in part and denied in part, and denied the plaintiffs' motions. The court found that the patients' allegations that, based on policies and procedures created and implemented by state officials, patients spent no more than six or seven hours per week in treatment, that their treatment plans were not detailed and individualized, that treatment staff was not qualified to treat sex offenders, and that staffing levels were often far too low, sufficiently stated a § 1983 substantive due process claim based on the officials' failure to provide adequate treatment.

According to the court, the patients stated a § 1983 First Amendment free exercise claim against state officials with allegations that MSOP's policies, procedures, and practices caused the patients to be monitored during religious services and during private meetings with clergy, did not permit patients to wear religious apparel or to possess certain religious property, and did not allow patients to “communally celebrate their religious beliefs by having feasts,” and that such policies and practices were not related to legitimate institutional or therapeutic interests. The court also found that the patients' allegations that state officials limited their phone use, limited their access to certain newspapers and magazines, and removed or censored articles from newspapers and magazines, stated a § 1983 First Amendment claim

that officials unreasonably restricted their right to free speech. The court found that the patients stated a § 1983 unreasonable search and seizure claim under the Fourth Amendment with allegations that, taken together with the patients' other allegations surrounding the punitive nature of their confinement, state officials violated their Fourth Amendment rights through their search policies, procedures, and practices, and that they were subjected to cell searches, window checks, strip searches, and random pat downs. (Minnesota Sex Offender Program)

U.S. District Court
MAIL
PUBLICATIONS
CORRESPONDENCE

Prison Legal News v. Chapman, 44 F.Supp.3d 1289 (M.D.Ga. 2014). The publisher of a periodical that addressed prisoners' rights brought a civil rights action against a county sheriff and a county jail commander, alleging that mail policies at the jail restricting the distribution of the periodical violated the First and Fourteenth Amendments. A bench trial was held. The district court entered judgment in favor of the publisher in part and in favor of the defendants in part. The court held that: (1) the jail's postcard-only policy did not violate the publisher's First Amendment right of free speech; (2) the jail policy totally banning individual inmates' receipt of publications through the mail violated the First Amendment; and, (3) the postcard-only policy violated due process. According to the court, the jail's postcard-only policy, which restricted a jail inmate's receipt of mail to postcards only, was reasonably related to the jail's legitimate penological interests in security and efficiency, and thus, did not violate the periodical publisher's First Amendment right to communicate with inmates. The court noted that by limiting the space in which correspondents could communicate with inmates, the policy impeded the ability to conceal illegal schemes in lengthy correspondence, reduced the likelihood of inmates' receipt of contraband, saved jail employees' four to six hours per day screening inmate mail, and the publisher could still communicate via postcards or by phone, and no easy, low-cost alternative existed. But the court found that the postcard-only policy did not provide appropriate notice and appeal procedures for non-postcard mail, and thus, violated the publisher's procedural due process rights, where no jail policy required the sender to be notified each time the jail decided not to deliver to an inmate a book, a magazine, or a multi-page letter. (Walton County Jail, Georgia)

U.S. District Court
ASSOCIATION
FAMILY
SEX OFFENDER

Reinhardt v. Kopcow, 66 F.Supp.3d 1348 (D.Colo. 2014). Inmates, parolees, and probationers, as well their family members, brought a § 1983 action against various employees of the Colorado Department of Corrections (CDOC) and members of the state's Sex Offender Management Board, alleging that the state's treatment of persons convicted of sex crimes violated their rights under the First, Fourth, Fifth, and Fourteenth Amendment. The plaintiffs sought monetary damages and injunctive and declaratory relief. The defendants moved to dismiss. The district court granted the motion in part and a denied in part. The court held that the potential penalty resulting from a Colorado policy that requires inmates in the state's sex offender treatment program to admit to prior acts, was so severe as to constitute compulsion to testify, and would violate their privilege against self-incrimination. The court noted that inmates who chose to participate in the program would be compelled to make incriminating statements that could be used against them during any retrial.

The court found that individuals classified as sex offenders, both imprisoned and on probation, sufficiently alleged that Colorado policies restricting their contact with family members, and particularly with their children, were not rationally related to any legitimate penological interest, as required to support their claims that these policies violated their First and Fourteenth Amendment rights related to familial association and due process. The court noted that some of these individuals were not convicted of sex offenses involving children, and some of them were not convicted of any sex offense at all. The court held that CDOC employees were entitled to qualified immunity from liability, where the rights of individuals classified as sex offenders that were purportedly violated by Colorado policies restricting their contact with family members were not clearly established at the time of the alleged violation. (Colorado Department of Corrections, Sex Offender Management Board)

U.S. Appeals Court
MAIL
PUBLICATIONS
SEX OFFENDERS

Stauffer v. Gearhart, 741 F.3d 574 (5th Cir. 2014). A state prisoner brought a civil rights action against prison employees in their individual and official capacities, claiming that they violated his First Amendment rights by confiscating his magazines under a Sex Offender Treatment Program (SOTP) rule, violated his due process rights by failing to provide any meaningful review of a mailroom employee's decisions, and violated his equal protection rights by applying the policy solely to inmates participating in the SOTP. The district court granted summary judgment for the prison employees. The prisoner appealed. The appeals court affirmed. The court held that the state prison's rule providing for confiscation of the magazines of prisoners in the Sex Offender Treatment Program (SOTP) was neutral, as required to not violate the prisoner's free speech rights, despite not banning newspapers and religious materials, since the purpose of the rule was to facilitate treatment and the prison did not have any ulterior motive in promulgating the rule. According to the court, the rule was rationally related to the prison's legitimate interest in sex-offender rehabilitation, as required to not violate the prisoner's free speech rights, since the rule placed restrictions on reading material in order to facilitate treatment by preventing distractions. The court noted that the magazines that the prisoner requested undermined the goals of the SOTP in the professional judgments by prison officials tasked with overseeing program. According to the court, confiscation of the magazines of the prisoner in the SOTP, pursuant to the rule, did not deprive the prisoner of due process, since the prisoner could, and did, use the prison's grievance system to claim that he had been wrongly denied those magazines, and prison administrators responded by investigating his claims and giving written justification that explained why he was not entitled to relief. (Texas Department of Criminal Justice, Goree Unit)

U.S. District Court
RELIGIOUS DIET

Sutton v. City of Philadelphia, 21 F.Supp.3d 474 (E.D.Pa. 2014). A Muslim inmate in a city prison system brought an action against the city, the company that provided food to the prison, and the company's regional manager, alleging violations of the First and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) claims seeking injunctive and declaratory relief were moot because the inmate had been moved from the city's prison system; (2) the company could be sued under § 1983; (3) failure to provide appropriate meals to the inmate was not the result of the company's policies or customs; (4) a genuine issue of material fact existed as to whether the company was jointly responsible for maintaining a discriminatory religious alternative meal system; (5) a genuine issue of material fact existed as to whether the regional manager acquiesced to a policy that on its face

discriminated against Muslim inmates; (6) the company did not violate RLUIPA; and (7) a city custom or policy did not cause the Muslim inmate to fail to receive meals required by his religion. The court noted that an instruction to the Muslim inmate by a single unidentified employee of the company that provided food to prisoners, to remove non-Halal meat from his breakfast tray and to eat the remainder, did not establish a custom or policy of the company that caused the inmate to be provided food that did not meet his religious requirements. (Philadelphia Prison System, Curran–Fromhold Correctional Facility, Philadelphia Industrial Correctional Center, Pennsylvania, and Aramark Corporation)

2015

U.S. Appeals Court
MAIL

American Civil Liberties Union Fund of Michigan v. Livingston County, 796 F.3d 636 (6th Cir. 2015). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail’s mail policy, pursuant to which all incoming and outgoing mail except “bona-fide legal mail” had to be on standard four-by-six-inch postcards, violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for a preliminary injunction. The district court granted the motion and the county appealed. The appeals court affirmed. The court held that the organization had a likelihood of success on the merits of its claim that the policy violated the Fourteenth Amendment’s due process protections. The court noted that the organization alleged that the jail blocked delivery of letters sent by the organization’s attorney without providing the organization or the intended inmate recipients notice and opportunity to contest the decision. (Livingston County Jail, Michigan)

U.S. District Court
MAIL

Barrett v. Premo, 101 F.Supp.3d 980 (D. Or. 2015). An inmate brought a claim under § 1983 against several corrections officials for violation of his First Amendment rights arising out of rejection of a piece of mail he sent to another inmate because it had artwork on the front of the envelope. The district court ordered declaratory and injunctive relief. The court found that: (1) the Department of Corrections did not have a consistently enforced policy or practice prohibiting artwork on the front of incoming envelopes, and thus the rejection of the inmate’s envelope violated his First Amendment rights; (2) monetary damages were inadequate to address the inmate’s loss of First Amendment freedoms; (3) the constitutional hardship to prison inmates was far greater than the insignificant potential impact on the prison’s time and resources from having to look more closely at envelopes to read a recipient’s address if artwork was present; (4) a permanent injunction enjoining the Department from enforcing the policy would permit inmates and nonparty members of the public to more easily and effectively communicate, and thus the public interest weighed in favor of an injunction; (5) a permanent injunction did not extend any further than necessary to correct the First Amendment violations and was the least intrusive means necessary to correct the violations; and (6) supervisory prison officials were sufficiently involved in alleged violation of the inmate’s First Amendment rights to be liable under § 1983. (Oregon State Penitentiary)

U.S. District Court
NEWSPAPERS

Brown v. Moore, 93 F.Supp.3d 1032 (W.D. Ark. 2015). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a sheriff and jail officials, alleging that his constitutional rights were violated. The defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by an issue of fact as to whether the inmate’s being housed with a prisoner who had a staph infection constituted deliberate indifference. The court held that the inmate, who alleged that a television, tuned to a cable news channel, “blared” from 8:00 a.m. to 9:00 p.m., did not establish an Eighth Amendment excessive noise claim where the only harm he mentioned was that he found the news to be repetitive and depressing, and this harm was related to the content of the news and the length of time the television was tuned to the same channel, and it did not suggest that the noise level was so extreme that it adversely affected his health. The court held that summary judgment on the inmate’s First Amendment claim was precluded by material issues of fact as to how many newspapers were distributed at the jail, how they were distributed, whether they were available on a daily basis, and who distributed the newspapers. (Boone County Detention Center, Arkansas)

U.S. District Court
PUBLICATIONS

Crime, Justice & America, Inc. v. Honea, 110 F.Supp.3d 1027 (E.D. Cal. 2015). The publisher of a magazine intended for newly arrested county jail detainees awaiting trial brought an action against a county alleging violation of the right to free speech protected under the First Amendment after the county barred general distribution of unsolicited paper products to detainees. After a bench trial, the district court held that: (1) the county jail’s policy of limiting written publications was rationally related to legitimate penological interest in preventing inmates from using paper to conduct illicit activity; (2) electronic touch-screen kiosks that displayed the publisher’s magazine in the jail were sufficient alternative means; (3) the impact of accommodating the asserted right weighed in favor of the county policy; and (4) the policy was not an exaggerated response. The court found that a corrections officer’s testimony regarding the nefarious uses of paper in county jails, including that he could not recall a time when the publisher’s law-oriented magazine had been used by detainees for such purposes was not, without more, sufficient to refute the county’s explanation that its policy limiting detainee’s access to paper was rationally related to a legitimate penological interest. The court ruled that the publisher’s proposal to provide two copies of the publisher’s law-oriented magazine in the county jail law library, standing alone, was not a sufficient alternative means for the publisher to communicate the existence of the magazine to county jail detainees, where most inmates would likely have left the jail before they would receive it from the library. (Butte County Jail, California)

U.S. Appeals Court
JAIL HOUSE
LAWYER
RETALIATION
FREE SPEECH

Dolan v. Connolly, 794 F.3d 290 (2nd Cir. 2015). A state prisoner brought an action against prison officials, asserting claims under § 1983 for retaliation for the prisoner’s actions in filing and voicing inmate grievances on behalf of other prisoners as a member of prison’s inmate liaison committee. The district court dismissed the action for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, vacated, and remanded in part. The court held that the prisoner’s actions in filing and voicing inmate grievances on behalf of other prisoners, as a member of the prison’s inmate liaison committee, was protected conduct under his First Amendment right of petition. (New York Department of Corrections and Community Supervision, Special Housing Unit, Fishkill Correctional Facility)

U.S. Appeals Court HUNGER STRIKE	<i>Jackson v. Humphrey</i> , 776 F.3d 1232 (11 th Cir. 2015). A wife brought an action under § 1983 against corrections officials, claiming that revocation of her visitation privileges with her incarcerated husband who was on a hunger strike violated the First Amendment. The district court granted summary judgment, based on qualified immunity, in favor of the officials, for their decision to terminate the wife’s visitation privileges during the time of hunger strike. The court denied summary judgment to the officials for the period following the end of the hunger strike, ruling that the question of whether the officials continued to enjoy qualified immunity after the hunger strike ended was one for a jury. The officials appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity. According to the court, the officials’ decision had been motivated by lawful considerations even though it had consequences in the future, where the husband had a considerable amount of influence over other prisoners and considered himself, and was viewed by others, to be the leader of the hunger strike. The court noted that evidence suggested that the wife had urged her husband to prolong that strike after the strike had ended, and the officials were legitimately concerned that the strike might spread, about the disruption caused by the strike, and about the security and safety of staff and inmates. (Georgia Dept. of Corr., Diagnostic and Classification Prison Special Management Unit)
U.S. District Court FORMER PRISON- ERS FAMILY FREE SPEECH	<i>Jamal v. Kane</i> , 96 F.Supp.3d 447 (M.D. Pa. 2015). Incarcerated individuals who engaged in written and oral human rights advocacy, prisoner advocacy groups, and entities that relied on prisoners’ speech, brought actions alleging that Pennsylvania’s Revictimization Act violated the First Amendment. The Act authorized civil actions seeking injunctive and other relief whenever an offender engaged in any “conduct which perpetuates the continuing effect of the crime on the victim.” After several actions were consolidated, the state attorney general and a district attorney moved to dismiss. The district court granted the motion in part and denied in part. The court held that the plaintiffs lacked standing to bring an action against the district attorney, but that the plaintiffs had standing to bring a suit against the attorney general, even though the Act had not been enforced against anyone since its enactment,. According to the court, the Act was plainly applicable to the plaintiffs, the attorney general failed to forswear enforcement of the Act, and the Act authorized any victim of a personal injury crime or any family member of a homicide victim to file suit. (Penn. Crime Victims Act)
U.S. Appeals Court CLOTHING PRIVACY	<i>King v. McCarty</i> , 781 F.3d 889 (7 th Cir. 2015). A state prisoner brought a § 1983 action against a county sheriff and two jail guards, alleging the jail’s use of a transparent jumpsuit during his transfer to a state prison, which exposed the prisoner’s genitals, violated the prisoner’s rights under the Fourth and Eighth Amendments. The district court dismissed the prisoner’s Eighth Amendment claim for failure to state a claim and granted the defendant’s motion for summary judgment as to the Fourth Amendment claim. The prisoner appealed. The appeals court reversed and remanded. The court held that: (1) the prisoner was required to direct his grievance to the jail, not the state prison, in order to satisfy the Prison Litigation Reform Act’s (PLRA) exhaustion requirement; (2) the jail’s grievance procedure was not “available,” within the meaning of PLRA; (3) allegations were sufficient to state a claim under the Eighth Amendment; and (4) the jail’s requirement that the prisoner wear a transparent jumpsuit did not violate the Fourth Amendment. (Illinois Department of Corrections, Livingston County Jail)
U.S. District Court NEWSPAPERS	<i>Koger v. Dart</i> , 114 F.Supp.3d 572 (N.D. Ill. 2015). A county jail inmate brought a § 1983 action against a county and the county sheriff, alleging that the county jail’s absolute ban on newspapers was unconstitutional under the First Amendment. The inmate moved for summary judgment. The district court granted the motion. The court held that the absolute ban on newspapers for inmates was rationally connected to jail security, where newspapers were flammable, they could cause sanitation problems because inmates could use them to clog toilets and they were issued with greater frequency than other publications, thus increasing the volume of material to be disposed, newspapers could be fashioned into weapons using paper mâché, and they could cause violence by informing inmates about the nature of other inmates’ charges or outside gang activity. But the court held that the county jail’s absolute ban on newspapers for inmates was not reasonably related to the jail’s legitimate interest in security, and thus the ban violated the inmate’s First Amendment free speech rights. According to the court, an absolute ban was the most extreme response available, as it completely extinguished the inmate’s ability to exercise his right to read newspapers, and the ban was an exaggerated response to security concerns, as there were obvious, easy alternatives that would accommodate the inmate’s right with de minimis impact on the jail, such as permitting newspapers only in the jail library to reduce waste generated, and not purchasing local papers to limit the risk of violence from inmates learning of local gang activity. (Cook County, Illinois)
U.S. District Court RELIGION ASSEMBLY	<i>Lopez v. Cipolini</i> , 136 F.Supp.3d 570 (S.D.N.Y. 2015). A prisoner brought a § 1983 action against prison officials, asserting claims for violation of her Free Exercise Clause rights under the First Amendment, the Religious Land and Institutionalized Person Act (RLUIPA), and the Fourteenth Amendment’s Equal Protection Clause, alleging that she was prohibited from attending religious services. The officials moved to dismiss the action. The district court granted the motion in part and denied in part. The court held that the prisoner’s allegation that prison officials prevented her from attending religious services was sufficient to support a claim for violation of the Equal Protection Clause. According to the court, the prisoner’s allegation that a prison official prevented her from attending two religious services “because of her hair” and because of “her sexuality,” while other prisoners in the facility were not prevented from attending those services, was sufficient to allege that she was treated differently from others similarly situated, as required to support a claim that prison officials discriminated against her in violation of the Equal Protection Clause. The court noted that there was no legitimate penological interest that would be served by denying the prisoner the right to attend religious services based on her hair and/or sexuality. (Downstate Correctional Facility, New York)
U.S. District Court REGULATIONS NEWSPAPERS CORRESPONDENCE	<i>McGowan v. U.S.</i> , 94 F.Supp.3d 382 (E.D.N.Y. 2015). A federal prisoner, who was serving the remainder of his sentence at a halfway house, brought an action against a U. S. Bureau of Prisons (BOP) employee who managed the halfway house, alleging violations of his right to free speech, and asserting claims for false arrest, false imprisonment, and negligence under the Federal Tort Claims Act (FTCA). The defendants moved to dismiss. The district court granted the motion and dismissed the action. The court held that the prisoner could not bring a Bivens claim alleging his free speech right was violated when he was transferred from the halfway house to a prison for violating a BOP regulation

against publishing under a byline, where the prisoner could have challenged his transfer through a habeas petition after exhausting BOP's administrative remediation process. The court noted that the prisoner's reassignment to prison was rescinded when his lawyers notified the BOP that the byline regulation had been repealed. (Community First Services, Inc., and Metropolitan Detention Center, New York)

U.S. District Court
BOOKS

Minton v. Childers, 113 F.Supp.3d 796 (D. Md. 2015). A prisoner brought a § 1983 action against prison officials, seeking injunctive relief, along with nominal and punitive damages, after the officials barred his receipt of used books pursuant to prison directives. The officials and the prisoner both filed motions for summary judgment. The district court granted the officials' motion and denied the prisoner's motion. The court held that the prisoner failed to exhaust administrative remedies under Maryland law prior to filing the § 1983 action in federal court, in violation of the Prison Litigation Reform Act (PLRA).

The court found that a prison directive banning inmate possession of incoming used books not sent directly by a publisher was reasonably related to legitimate penological interests, as required by due process. The court noted that the prisoner was allowed to receive new books sent directly from a publisher, the ban was expressly aimed at advancing jail security and protecting the safety of jail personnel and other inmates, the ban was logically connected to those goals, to allow inmates to possess used books from stores or e-commerce companies could have had significant impact on the safety and security of prison personnel and other inmates. The court noted that the prisoner did not point to an alternative that fully accommodated his rights while at same time imposed de minimis cost to valid penological interests. (Eastern Correctional Institution, Maryland)

U.S. Appeals Court
CENSORSHIP
PUBLICATIONS

Murchison v. Rogers, 779 F.3d 882 (8th Cir. 2015). A former state prisoner filed a § 1983 action, alleging that prison officials violated his First Amendment rights by censoring his weekly news magazine (Newsweek). The district court dismissed claims against certain officials, and granted summary judgment in favor of the remaining officials. The prisoner appealed. The appeals court affirmed, finding that censorship of the prisoner's weekly news magazine was rationally connected to the officials' legitimate penological interest in prohibiting materials that promoted violence, disorder, or violation of the law. The court noted that the prisoner had alternative means of exercising his First Amendment right. (South Central Correctional Center, Missouri)

U.S. District Court
NAME

Norsworthy v. Beard, 87 F.Supp.3d 1104 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate also alleged that the officials were deliberately indifferent to her medical needs and deprived her of her right to equal protection under the law when they denied her sex reassignment surgery. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that: (1) the inmate stated a claim for prospective injunctive relief; (2) the inmate stated an Eighth Amendment deliberate indifference claim based on denial of the request for sex reassignment surgery; (3) the inmate stated an equal protection claim; but (4) the inmate failed to state an Eighth Amendment deliberate indifference claim based on denial of a request for a legal name change. (Mule Creek State Prison, California)

U.S. Appeals Court
PUBLICATIONS
OBSCENITY
MAIL

Payton v. Cannon, 806 F.3d 1109 (7th Cir. 2015). A prisoner brought a § 1983 action challenging a prison policy banning all sexually explicit material as violative of the First Amendment. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed, finding that the policy did not violate the prisoner's First Amendment right of free expression. The court held that the policy was reasonably related to the prison's legitimate penological interests in preventing prison violence and black-market trading among prisoners. (Stateville Prison, Illinois)

U.S. District Court
PUBLICATIONS
REGULATIONS

Prison Legal News v. Jones, 126 F.Supp.3d 1233 (N.D. Fla. 2015). The publisher of a monthly legal magazine brought a § 1983 action against the Secretary of the Florida Department of Corrections (FDOC), alleging violations of its First Amendment and procedural due process rights arising out of impoundment and rejection of magazine publications. Following a bench trial, the district court held that the regulation prohibiting prisoner access to publications with a specific type of advertisements did not violate the First Amendment. The court noted that advertisements for three-way calling and call-forwarding services in the magazine presented a security threat, warranting the FDOC's decision to impound and reject the magazine under a Florida administrative rule.

The court held that FDOC's repeated failure to provide an impoundment notice to the publisher violated the publisher's substantive due process rights. (Florida Department of Corrections)

U.S. District Court
FOIA- Freedom of
Information Act
TELEPHONE

Prison Legal News v. U.S. Dept. of Homeland Sec., 113 F.Supp.3d 1077 (W.D. Wash. 2015). A requester brought a Freedom of Information Act (FOIA) action against the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) for information related to prison telephone practices and policies, including those at ICE's federal immigration detention centers. The parties filed cross-motions for summary judgment. The district court granted the requestor's motion. The court held that the performance incentive rate of the phone services contractor for federal immigration detention centers was not exempt from disclosure. According to the court, the phone services contractor was not likely to suffer substantial competitive harm if the performance incentive rate from its successful bid for federal immigration detention centers was disclosed, and thus that rate, which reflected the percentage of revenue set aside in escrow and only paid to the contractor upon the government's determination that the contractor performed successfully, was not exempt from disclosure. The court found that the defendants violated FOIA by failing to make a timely determination on the requester's requests for information. The court found the delays "egregious" where the requester did not receive ICE's first production of documents, or any other determination, until 361 days after mailing its first FOIA request letter, seven months after mailing its second request letter, and almost four months after filing this lawsuit, and production of the remainder of the requested documents was not completed for several additional months. The court awarded reasonable attorney fees and costs to the requester, finding that it was the prevailing party. (U.S. Department of Homeland Security, Immigration and Customs Enforcement)

U.S. District Court
MAIL
ASSOCIATION
MARRIAGE

Quiroz v. Short, 85 F.Supp.3d 1092 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official acted with a retaliatory motive when he sent to the prisoner's fiancée a letter intended for another woman; (2) whether the prison official acted with a retaliatory motive when he issued a rules violation report (RVR) against the prisoner; and (3) whether officials had an agreement to retaliate against the prisoner by issuing the RVR against him. The court found that: (1) the official did not have a retaliatory motive in investigating an administrative grievance; (2) the prisoner's assertion that one of the official's duties was to monitor incoming and outgoing mail was insufficient to show that the official destroyed two specific pieces of the prisoner's mail; (3) the official was entitled to qualified immunity on the prisoner's right to intimate association claim; and (4) the official's act of sending a letter to the prisoner's fiancée that was intended for another woman did not prevent the prisoner from continuing to associate with his fiancée and did not prevent the prisoner from marrying his fiancée. (Pelican Bay State Prison, Secure Housing Unit, California)

U.S. Appeals Court
MARRIAGE
VISITING

Riker v. Lemmon, 798 F.3d 546 (7th Cir. 2015). A female former prison worker brought an action against prison officials, alleging that the officials denied her request to marry an inmate in violation of her fundamental rights. The district court granted the officials' motion for summary judgment and the worker appealed. The appeals court reversed and remanded, finding that summary judgment was precluded by a genuine issue of material fact as to whether the prison's decision to deny the worker's request to marry an inmate was reasonably related to its legitimate penological interests. The worker had been an employee of Aramark Correctional Services, Inc. that operated and managed food services in the prison. She became involved with an inmate worker who was under her supervision. She quit her job after being discovered in a romantic relationship with the inmate. She was denied visiting privileges after she left her job. The former worker alleged that prohibiting her marriage to the inmate was an exaggerated response to the prison's security objectives and that the prohibition was unnecessary for the maintenance of a safe and orderly institution. She emphasized that she only sought "a single visit to the institution, of a short duration, for the limited purpose of marrying her fiancée." (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
CORRESPONDENCE
TELEPHONE
VISITS
REGULATIONS

U.S. v. Mohamed, 103 F.Supp.3d 281 (E.D.N.Y. 2015). A defendant who was indicted for murder of an internationally protected person and attempted murder of an internationally protected person, filed a motion to vacate or modify special administrative measures governing conditions of his pretrial detention. The district court denied the motion, finding that the measures were rationally connected to the legitimate government objective of preventing the detainee from coordinating violent attacks. The detainee had been placed in a special housing unit and limitations on communications between him and people inside or outside the prison were limited. The court noted that the detainee had admitted allegiance to terrorist organizations, had previously broken out of prison two times, one escape was allegedly coordinated between the defendant and a terrorist organization, and three prison guards had been killed during one escape. (Metropolitan Correctional Center, Manhattan, New York)

SECTION 20: GOOD TIME

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1973

U.S. Supreme Court
GOOD-TIME CREDIT
PRE-SENTENCE
DETENTION

McGinnis v. Royster, 410 U.S. 263 (1973). Royster and another state inmate challenge a New York Correction Law as violative of equal protection. The rule denied certain state prisoners good time credit toward parole eligibility for the period of their pre-sentence county jail incarceration. Those released on bail prior to sentencing received full allowance of good time credit for the entire period of confinement.

A three judge district court found there was no rational basis for the distinction between jail and non-jail defendants in awarding good time and upheld the inmates' claim. McGinnis, Commissioner of Corrections, appealed directly to the U.S. Supreme Court. (Reversed.)

HELD: Under the New York good-time law, good time credit is awarded for a prisoner's positive performance in state prison rehabilitation programs. The county jails serve primarily as detention centers and as they serve no significant rehabilitation purpose, a rational basis does exist for refusing to give good-time credits for pre-sentence jail detention. 410 U.S. at 273.

NOTE: This decision applies to good-time credits only. New York law credits any time spent in pre-sentence detention toward any ultimate sentence. (New York State Prison)

U.S. Supreme Court
REVOCACTION

Preiser v. Rodriguez, 411 U.S. 475 (1973). Rodriguez and two other New York state prisoners bring a 42 U.S.C. Section 1983 action, in conjunction with a habeas corpus action against Preiser, Correction Commissioner, seeking restoration of good-time credits allegedly unconstitutionally cancelled. The three inmates participated in a conditional release program by which an inmate serving an indeterminate sentence could earn up to ten days per month good behavior credit toward reduction of his maximum sentence. The credits earned were cancelled as a result of disciplinary proceedings. The requested relief, restoration of the good time credits, would have resulted in the immediate release from confinement of each of the inmates. Viewing the habeas corpus claim as an adjunct to the Section 1983 action, thereby removing the need for exhaustion of state remedies, the U.S. District Court ruled for each of the inmates entitling each to immediate release on parole. Following the Second Circuit Court of Appeal's decision affirming, Preiser sought certiorari from the United States Supreme Court. (Reversed.)

HELD: "[W]hen a state prisoner is challenging the very fact of duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." 411 U.S. at 500.

NOTE: A 42 U.S.C. Section 1983 action does not require that the plaintiff first seek redress in state courts. Where habeas corpus is the exclusive remedy allowed by federal laws, the plaintiff cannot seek the intervention of a federal court until he has first sought and been denied relief in the state courts, if a state remedy is available and adequate. 411 U.S. at 477, See, 28 U.S.C. Section 2254. (New York Department of Corrections)

1974

U.S. Supreme Court
DUE PROCESS
REVOCACTION

Wolff v. McDonnell, 418 U.S. 539 (1974). McDonnell, an inmate in a Nebraska state prison, brought this 42 U.S.C. Section 1983 action on behalf of himself and other inmates, alleging that disciplinary proceedings did not comply with the due process clause of the fourteenth amendment; that the inmate legal assistance program did not

meet constitutional standards, and that regulations governing the inspection of mail to and from attorneys were unconstitutionally restrictive. Wolff, Warden of the Prison was named as the defendant. McDonnell sought injunctive relief and damages. The U.S. District Court rejected the procedural due process claim. It held the prison's policy of inspecting all incoming and outgoing mail to and from attorneys violated prisoners' access to the courts. Restrictions on inmate legal assistance were not in violation of the Constitution. The Eighth Circuit Court of Appeals reversed with respect to the due process claim, holding disciplinary proceedings in prisons must comply with the procedural requirements of parole revocation and probation revocation proceedings. On the basis of Preiser v. Rodriguez, 422 U.S. 475 (1973) the court held good-time credits could not be restored on this action but ordered that any disciplinary actions taken as a result of proceedings that failed to comply with procedures as outlined by the court be expunged from prison records. The court affirmed the district court's decision on the attorney-inmate correspondence issue but ordered further proceedings to determine if the state was complying with the directives of Johnson v. Avery, 393 U.S. 483 (1969), in providing legal assistance to inmates. From this decision Wolff petitioned for a writ of certiorari.

HELD: "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply....[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application." 418 U.S. at 556.

The particular disciplinary procedure challenged in this case involved a Nebraska statute allowing loss of good time credits for serious misconduct. The court ruled that minimum requirements of procedural due process must be observed, taking into account the institutional environment, and specifically,

HELD: a. "[W]ritten notice of the charges must be given to the disciplinary action defendant in order to inform him of the charges and to enable him to marshal the facts and prepare a defense. At least a brief period of time after the notice, no less than twenty-four hours, should be allowed to the inmate to prepare for the appearance before the Adjustment Committee." 418 U.S. at 564.

b. "[T]here must be a 'written statement by the fact finders as to the evidence relied on and the reasons' for the disciplinary action." 418 U.S. at 564, (quoting Morrissey v. Brewer) 408 U.S. at 489.

c. "[T]he inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566.

d. "We think that the Constitution should not be read to impose the [cross-examination] procedure at the present time, and that adequate basis for decision in prison disciplinary cases can be arrived at without cross-examination." 418 U.S. at 568.

e. "At this stage of the development of these procedures, we are not prepared to hold that inmates have a right to either retained or appointed counsel in disciplinary proceedings." 418 U.S. at 570.

HELD: An Adjustment Committee made up of the associate warden custody as chairman, the correctional industries superintendent, and the receptions center director is not insufficiently impartial to satisfy the due process clause. 418 U.S. at 570, 571.

HELD: Due process requirements in prison disciplinary proceedings are not to be applied retroactively by requiring the expunging of prison records of improper disciplinary determinations. 418 U.S. at 573. (Nebraska State Prison)

1976

U.S. Supreme Court DUE PROCESS EQUAL PROTECTION

Baxter v. Palmigiano, Enomoto v. Clutchette, 425 U.S. 308 (1976). Palmigiano and Clutchette, inmates in Rhode Island and California prisons respectively, alleged in separate 42 U.S.C. Section 1983 actions that they had been denied their rights to due process and equal protection of the laws under the fourteenth amendment. Both inmates claimed that they were entitled to the aid of legal counsel during disciplinary proceedings. Additionally, Palmigiano claimed he had a right to cross-examine witnesses, and Clutchette claimed that his decision to remain silent during disciplinary proceedings should not have been given evidentiary significance. The U.S. district court granted Clutchette relief, a decision affirmed by the Ninth Circuit Court of Appeals. Palmigiano was denied relief in U.S. District Court, but the First Circuit Court of Appeals reversed. The U.S. Supreme Court granted certiorari and heard the two cases together. Decisions were then reversed.

HELD: "We see no reason to alter our conclusion so recently made in Wolff [v. McDonnell] that inmates do not have a right to either retained or appointed counsel in disciplinary hearings." 425 U.S. at 315.

HELD: "[P]ermitting an adverse inference to be drawn from an inmate's silence at his disciplinary proceedings is not, on its face, an invalid practice...." 425 U.S. at 320.

HELD: Mandatory confrontation and cross examination, except where prison officials can justify their denial on one or more grounds that appeal to judges, effectively pre-empts the area that Wolff left to the sound discretion of prison officials." 425 U.S. at 322.

HELD: In reversing the Ninth Circuit Court of Appeals' ruling that minimum due process--such as notice, opportunity for response, and statement of reasons for action by prison officials--was necessary where inmates were deprived of privileges, the court found the disciplinary proceedings involved here to concern allegations of serious misconduct; thus, the Wolff standards apply. Without a fact pattern involving loss of privileges: "we are unable to consider the degree of 'liberty' at stake in loss of privileges and thus whether some sort of procedural safeguards are due when lesser penalties are at stake." 425 U.S. at 323.

NOTE: "Due to the peculiar environment of the prison setting, it may be that certain facts relevant to the disciplinary determination do not come to light until after the formal hearing. It would be unduly restrictive to require that such facts be excluded from consideration; in as much as they may provide valuable information with respect to the incident on questioning and may arrest prison officials in tailoring penalties to enhance correctional goals. In so stating, however, we in no way diminish our holding in Wolff that 'there must be a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action.'" [Cite omitted]. 425 U.S. at 322-323 N.5.

GENERAL NOTES: Baxter and Wolff, involving three prison systems (West Coast, Midwest, and East Coast) appear to present the definitive U.S. Supreme Court position on prison disciplinary procedures. It is clear that the standards of Baxter and Wolff apply to instances of serious misconduct. While no extensive definition of serious misconduct was offered by the Court, from the two decisions loss of good time and punitive segregation apply to "loss of privileges" situations. (Rhode Island and California prisons)

1979

U.S. District Court
RESTORATION

Brown v. Neagle, 486 F.Supp. 364 (S.D. W.V. 1979). Placement in administrative detention as an escape risk on the basis of escapes from other institutions by acquaintances of the plaintiff is irrational. Return to general population and credit for the good time which would have been earned in general population is ordered. The plaintiff is to be treated as any other inmate. (Federal Corr. Institution, Alderson, West Virginia)

1980

U.S. Appeals Court
RESTORATION

Baxter v. Estelle, 614 F.2d 1030 (5th Cir. 1980), cert. denied, 499 U.S. 1085. An inmate must exhaust administrative remedies before seeking habeas review of the loss of good-time. (Texas Dept. of Corrections)

U.S. Appeals Court
REMOVAL

Kenan v. Bennett, 613 F.2d 127 (5th Cir. 1980). The taking of good-time or the removal from a position where good-time can be earned requires procedural due process. An attack on such taking or removal is an attack on the length and duration of confinement so that available state remedies must be exhausted. (Kilby Corr. Facility, Alabama)

U.S. District Court
DUE PROCESS

McGhee v. Belisle, 501 F.Supp. 189 (E.D. La. 1980). Due process does not apply in the taking of good time where the state has left the awarding of good time totally within the discretion of the administering officials. The statute creating good time does not create a protected liberty interest, and there are no regulations in existence creating such an interest. (Orleans Parish Prison, Louisiana)

1981

U.S. Appeals Court
REVOCATION

Beebe v. Phelps, 650 F.2d 774 (5th Cir. 1981). A good time forfeiture statute permitting the forfeiture of good time upon revocation of parole cannot be applied to an individual paroled after the adoption of the statute whose crime was committed prior to the passage of the statute without violating the prohibition against ex post facto laws.

U.S. Appeals Court
REVOCATION

Bentsen v. Ralston, 658 F.2d 639 (8th Cir. 1981). Where good time is revoked in an institutional disciplinary proceeding, thereby delaying the parole release date, and the parole board upon review sets a presumptive parole release date sooner than the maximum date although the previous presumptive date had been the maximum date, the action of the parole board in setting the presumptive parole date was not an implied reversal of the disciplinary proceeding restoring good time.

1982

U.S. District Court
DUE PROCESS

Harris v. MacDonald, 532 F.Supp. 36 (N.D. Ill. 1982). A prison disciplinary proceeding involving assignment to segregation and loss of statutory good-time credit implicates the deprivation of "liberty" in fourteenth amendment terms. Accordingly, the prisoner is constitutionally guaranteed certain procedural protections, including advance written notice of the charges and a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action. However, not every violation of administrative procedure in connection with major discipline automatically equates with a due process violation. (Stateville Correctional Center, Illinois)

1986

U.S. District Court
GOOD-TIME CREDIT

Conley v. Brewer, 652 F.Supp. 106 (W.D. Wis. 1986). A prisoner filed a petition for a writ of habeas corpus, claiming that the good time credits he accumulated while in prison before his release on parole were confiscated without notice or hearing in violation of due process. The district court held that: (1) interpretation of good time as "used up" upon parole release is reasonable, and (2) although parolee might not have been informed that his signing of the parole release form would nullify his accumulated good time credit, his parole officer's silence on that subject did not implicate due process. Good time and parole statutes are susceptible to conflicting interpretations about effect and duration of pre-parole good time credit, so it was not the district court's role to interpret the statute as the court thought best but rather to uphold the United States Parole Commission's interpretation of statutory scheme, even if other reasonable interpretations existed or if different construction appeared wiser. (Federal Correctional Institution, Wisconsin)

U.S. District Court
REVOCAION

Holton v. Fields, 638 F.Supp. 1319 (S.D. W.Va. 1986). The breach of a promise allegedly made to an inmate by a jail administrator was not actionable under 42 U.S.C.A. Section 1983. The administrator allegedly promised the inmate he would be granted day-for-day good time credit for all of the time he spent as a member of the jail paint crew. Nonpayment of wages or a disallowance of promised good time at best amounts only to an allegation of breach of contract, in the absence of a public policy requiring payment of wages or allowance of good time for work performed while in jail. Neither West Virginia law nor federal law required payment or good time credit under the circumstances. (Cabell County Jail, West Virginia)

1987

Wash. Supreme Court
REVOCAION

Petition of Johnston, 745 P.2d 864 (Wash. 1987). The Washington Supreme Court concluded that a single positive result to an "EMIT" urinalysis test, conducted to detect the presence of marijuana, was sufficient evidence of marijuana use to uphold, on due process grounds, a revocation of prisoners' good time credits or the imposition of mandatory segregation time. The Centers for Disease Control had determined that the test in question was 97-99 percent accurate. (Washington State Department of Corrections)

State Appeals Court
DUE PROCESS
RESTORATION

Sanchez v. Coughlin, 518 N.Y.S.2d 456 (A.D. 3 Dept. 1987). An inmate sought review of determination that he violated disciplinary rules. Following transfer from the Supreme Court, Ulster County, the Supreme Court held that evidence was insufficient to show that the inmate violated any prison rules when a revolver was found in a package which had been brought to him by members of his family but which he never possessed nor controlled. The appeals court found there was insufficient evidence to show the inmate had anything to do with a plan to smuggle him a gun and he was being punished "not for what he in fact did, but what it is speculated and surmised he did." The court ordered that the incident be removed from his correction and parole records and his lost good-time be restored. However, the court did not grant full back prison wages, stating that this relief is "not awardable." (Eastern Correctional Facility, New York)

1989

U.S. Appeals Court
DUE PROCESS
REVOCAION
LIBERTY INTEREST

Bergen v. Spaulding, 881 F.2d 719 (9th Cir. 1989). A prisoner has no constitutional or inherent right to be conditionally released before the expiration of a valid sentence, but state early release statutes can create a liberty interest protected by due process guarantees. A civil rights action was brought by a prisoner who alleged that his release more than 20 days after the "good behavior early release date" violated his right to due process. On appeal, the court found that the board charged with determining the prisoner's early release did not have discretion, under Washington law, to decide without a hearing that the prisoner should remain in prison beyond his good time release date. The prisoner's late release without a hearing would amount to deprivation of liberty interest without due process. Good behavior time credits cannot be denied, once they have been earned, without the benefit of minimal due process protections. (Washington State Prison)

U.S. Appeals Court
EQUAL
PROTECTION
GOOD TIME
CREDIT

Kalka v. Vasquez, 867 F.2d 546 (9th Cir. 1989). A prisoner filed a habeas corpus petition, contending that he was entitled to work time credit on a one-for-one day basis, rather than a one-for-two day basis, from the time he was available to work until the time he was given work. The U.S. District Court denied the petition, and the prisoner appealed. The appeals court found that the refusal to award the credits on a one-for-one day basis did not violate the prisoner's equal protection rights. Section 2933(b) states that "[w]orktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932." Except for prisoners ineligible pursuant to section 2932, "every prisoner shall have a reasonable opportunity to

participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources." Cal.Penal Code Section 1933(b) (West 1982 & Supp.1989). Section 2933(a) provides that prisoners who were willing to participate but were not assigned work will receive no less credit than is provided under Section 2931: one day for every two served. (California Department of Corrections)

U.S. Appeals Court
GOOD TIME
CREDIT

Lewis v. Attorney General of U.S., 878 F.2d 714 (3rd Cir. 1989). A youth offender who was sentenced as an adult during the service of the Youth Corrections Act sentence petitioned for habeas corpus relief, claiming entitlement to good time credits. The U.S. district court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the petitioner was entitled to good time credits for a period starting from his sentencing as an adult, but not for the time allegedly served under conditions violating his youth sentence prior to adult sentencing. (Federal Correctional Institution, Petersburg, Virginia)

U.S. Appeals Court
DUE PROCESS
EQUAL
PROTECTION
GOOD TIME
CREDIT

Moss v. Clark, 886 F.2d 686 (4th Cir. 1989). A prisoner who had been convicted of a violation of the District of Columbia code and who had been placed in a federal prison because of overcrowding in the District of Columbia facility filed a habeas corpus petition challenging the constitutionality of provision of the District of Columbia Good Time Credits Act of 1986 denying to such federalized prisoners the more favorable good time credit eligibility available under D.C. law. The district court found that such denial had no rational relationship to the legitimate governmental purpose of relieving overcrowding, and resulted in a denial of equal protection and due process. The claim was properly brought under habeas corpus statute, as it challenged the execution, rather than the legality, of the sentence, and a challenge under that statute was especially appropriate where federal custody did not result from a federal conviction. The appeals court reversed the lower court decision, finding that the rights of prisoners were not violated. (Federal Prison System)

U.S. Appeals Court
GOOD TIME
CREDIT
EX POST-FACTO

Raske v. Martinez, 876 F.2d 1496 (11th Cir. 1989), *cert. denied*, 110 S.Ct. 543. An inmate in a Florida prison sought a writ of habeas corpus claiming that a Florida statute which altered the amount and calculation of gain-time constituted unconstitutional ex post facto law as applied to prisoners such as himself who were convicted of offenses that occurred prior to the statute's passage. Under Florida law, a prisoner who behaves well and diligently performs assigned work can reduce his term of incarceration by earning "gain time." In the district court, the petitioner claimed that the statute that altered the amount and calculation of gain time constituted an unconstitutional ex post facto law as applied to prisoners such as himself who were convicted of offenses that occurred prior to the statute's passage. The U.S. District Court granted the writ, and the state of Florida appealed. The appeals court, affirming the decision, stated that the statute constituted an unconstitutional ex post facto law as applied to the inmate. The statute allowing prisoners to earn only 20 days per month of incentive gain-time constituted an unconstitutional ex post facto law as applied to the Florida inmate who was convicted of offenses that occurred prior to the statute's passage. (Florida Department of Corrections)

1990

U.S. Appeals Court
REVOCAATION

Fruit v. Norris, 905 F.2d 1147 (8th Cir. 1990). Inmates brought a civil rights action against prison officials asserting constitutional violations in relation to their being disciplined for refusing to assist the prison maintenance supervisor in cleaning out the wet-well portion of the prison's raw sewage lift-pump station without protective clothing and equipment. The U.S. District Court dismissed after presentation of the inmates' case and the inmates appealed. The appeals court found that the inmates established a prima facie eighth amendment violation and the warden could be held liable for such a violation. While supervisors are not liable under Section 1983 on a respondeat superior theory, they can be liable for their personal involvement in a constitutional violation, or when their corrective action amounts to deliberate indifference to or tacit authorization of violative practices. While the deprivation of good-time credits claimed in a civil rights action would have been properly brought in a habeas action, rather than a civil rights action, the state waived the exhaustion requirement by failing to notify the district court that inmates had not exhausted their claims in state court. (Tucker Maximum Security Unit, Arkansas Dept. of Corr.)

U.S. Appeals Court
EQUAL
PROTECTION

Jackson v. Thornburgh, 907 F.2d 194 (D.C. Cir. 1990), *affirming*, 702 F.Supp. 9 (D.D.C. 1988). Female prisoners who were housed in federal prisons after being convicted in District of Columbia courts sought a writ of habeas corpus and challenged the constitutionality of the District of Columbia Good Time Credits Act. The defendants moved for a summary judgment. The U.S. District Court granted the defendants' motion for a summary judgment, and the female prisoners appealed. The district court found

that the Act, which reduces the minimum sentence of prisoners in district prisons, did not violate the equal protection rights of the female prisoners, even though long-term female offenders are housed in a federal facility and are not covered by the Act. (District of Columbia Penal Facilities)

U.S. Appeals Court
GOOD TIME
CREDIT

Lee v. Dugger, 902 F.2d 822 (11th Cir. 1990). An inmate brought a civil rights action against a prison official, alleging that he was incarcerated longer than he should have been on a prior sentence because he was not credited with proper gain time. The U.S. District Court entered a summary judgment in favor of the official, and the inmate appealed. The appeals court found that the official was entitled to qualified immunity from the civil rights action brought by the former inmate who was allegedly not credited with proper gain time due to the official's misinterpretation of an amended gain-time statute, where only one decision by the intermediate appellate court had construed the new statute. (Per Curiam, with one Circuit Judge concurring specially.) (FL State Prison)

U.S. District Court
REDUCTION OF
CROWDING

Palmigiano v. DiPrete, 737 F.Supp. 1257 (D. R.I. 1990). In an ongoing litigation over the constitutionality of prison overcrowding, petitioners moved to find the defendants in continuing contempt of court and the defendants moved to modify the existing orders. The district court found that immediate relief to alleviate overcrowding was required, including the maintenance of a fund to provide indigent detainees with bail, awarding 90 days of expedited good time and awarding additional good time every 30 days until conditions were mitigated. (Adult Correctional Institutions, Rhode Island)

1991

U.S. District Court
EQUAL PROTECTION

Brodheim v. Rowland, 783 F.Supp. 1245 (N.D. Cal. 1991). A California prisoner filed an amended petition for writ of habeas corpus. The U.S. District Court, granting the writ, found that denying work time credits under California law to prisoners convicted of murder, while granting such credits to would-be assassins, was reasonably related to a system of qualifying criminals who had not killed someone earlier for parole than criminals who had killed someone in cold blood, and therefore the system did not violate the equal protection clause. However, allowing habitual offenders to earn work time credits, but denying work time credits to prisoners convicted of murder, did not have a rational basis and violated the equal protection clause, since a murderer who had been convicted twice before of violent crimes would be better off than a murderer new to the prison system. (Vacaville State Prison, California)

U.S. Appeals Court
EQUAL PROTECTION

Chestnut v. Magnusson, 942 F.2d 820 (1st Cir. 1991). A state prisoner petitioned for habeas corpus. The petition was dismissed by the U.S. District Court, and the prisoner appealed. The court of appeals found that the failure to the State of Maine to provide a system of good-time credits to pretrial detainees, while allowing such credits to sentenced prisoners, did not amount to denial of equal protection to the sentenced prisoner who, unable to make bail because of indigency, was incarcerated prior to trial. Pretrial detainees already had an incentive for good behavior in avoiding longer sentences. (Maine Department of Corrections)

U.S. District Court
EQUAL PROTECTION

Copeland v. Matthews, 768 F.Supp. 779 (D.Kan. 1991). An inmate who had been convicted in the District of Columbia and was incarcerated in a federal prison petitioned for writ of habeas corpus. The district court found that the District of Columbia Good Time Credits Act did not violate equal protection, even though it applied to reduce the minimum sentences of inmates incarcerated in the District correctional facilities, but not to District offenders who were incarcerated elsewhere. The Act was rationally related to the legitimate governmental interest in reducing overcrowded correctional facilities in the District of Columbia and the inmate was not entitled to relief on his claim, as prisoners had no fundamental right to parole or to release before expiration of a valid sentence. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. District Court
REVOCATION

Hamilton v. Scott, 762 F.Supp. 794 (N.D. Ill. 1991). An inmate sued a former director of the Illinois Department of Corrections, a warden at the prison, and three other Department officials for their alleged violation of his equal protection and due process rights in connection with revocation of his good-time credits. The district court found that where the inmate had a right to due process at the hearing that took away his good-time credits, the prison disciplinary committee's failure to call as witnesses the officers who had participated in the shake-down in which the contraband was discovered did not violate the inmate's due process rights, where the inmate himself had an opportunity to call the officers as witnesses and failed to do so. The prison officials failure to test weapons discovered in the inmate's cell for fingerprints did not violate the inmate's due process rights, where the fingerprint testing would at most have shown the absence of the inmate's fingerprints on weapons and would not have directly undercut the evidence presented at the proceeding to revoke the inmate's good-time credits. It was also found

that the prison authorities' decision to seek revocation of the inmate's good-time credits when contraband was discovered in the cell, while not seeking revocation of good-time credits of inmates in an adjoining cell who allegedly had equal access to the contraband, did not violate the first inmate's equal protection rights, where the case against the first inmate was decided on its own merits. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
GOOD TIME CREDIT

Lemieux v. Kerby, 931 F.2d 1391 (10th Cir. 1991). The petitioner sought habeas corpus relief from sentencing. The U.S. District Court dismissed the petition, and the petitioner appealed. The court of appeals found that the statute that authorizes sentencing credit for good time after sentencing, but not for good time in a county jail before sentencing, serves a rational purpose of rehabilitating criminals and complies with due process and equal protection clauses. (New Mexico State Prison System)

U.S. District Court
GOOD TIME
CREDIT
EX POST FACTO
EQUAL PROTECTION

Lustgarden v. Gunter, 779 F.Supp. 500 (D. Colo. 1991). A Colorado prisoner filed a petition for writ of habeas corpus. The U.S. District Court recommended the dismissal of the petition. The district court adopted the Magistrate Judge's recommendation that the refusal of the Colorado Parole Board to apply the prisoner's good time credits to his sentence on grounds that the prisoner was a sex offender did not violate the prisoner's equal protection rights; statutory classification providing that sex offenders are to be treated differently from other offenders with regard to parole is rationally related to legitimate state interests, since obedient behavior in prison does not indicate that a sex offender has truly been reformed. In addition, the Parole Board's denial of parole to the sex offender who had accumulated sufficient "good time" credits to render him immediately eligible for release did not constitute cruel and unusual punishment, where the prisoner's sentence was within statutory limits, there had been no showing of illegality or abuse of discretion, and the prisoner's parole had been delayed because the Board still considered him a threat to society. Furthermore, the application to the prisoner of the Colorado's Supreme Court's decision in Thiret v. Kautzky, that a sex offender is not entitled to mandatory parole even if the application of accumulated good-time credits would require immediate release, instead of the contrary practice followed by the Board at the time of the conviction, did not violate due process clause's prohibitions against "judicial ex post facto" actions, and the sex offender's unilateral expectation that good-time credits might be applied to facilitate his early release was insufficient to support his assertion of a constitutionally protected interest, where a Colorado statute left to the parole board sole discretion whether to grant or deny parole prior to conclusion of a sex offender's sentence. (Colorado)

U.S. District Court
EQUAL PROTECTION
GOOD-TIME CREDIT

Neal v. Hargrave, 770 F.Supp. 553 (D. Nev. 1991). An inmate brought a civil rights action to recover damages based on incorrect calculation of his good-time work credits, resulting in extended confinement. The district court found that in order for the inmate to preserve his civil rights claim against the defense of statute of limitations, he was required to timely file the action for damages when he was denied the credits, or within the limitations period thereafter, even though he would not be able to proceed with his action for damages until he had litigated the habeas corpus claim of entitlement to relief in all of the necessary courts. If an inmate acted reasonably in not learning the facts concerning wrongful denial of good-time work credits, the statute of limitations on the civil rights claim did not begin to run at the time that they were denied. The court also found that, although Nevada law does not create a liberty interest protected by due process in good-time credits, the inmate did state a claim for denial of equal protection by alleging that he was treated differently than similarly situated prisoners with respect to good-time credits. (Nevada)

U.S. Appeals Court
EX POST FACTO
REVOCATION

Offet v. Solem, 936 F.2d 363 (8th Cir. 1991). An inmate who lost good-time credits as a result of disciplinary action brought a civil rights action against prison officials. The U.S. District Court entered judgment in favor of the officials, and the inmate appealed. The court of appeals found that the application of a South Dakota statute providing automatic forfeiture of one day of good-time credit for every day spent in punitive confinement to inmates convicted before the statute's effective date did not clearly violate constitutional ex post facto principles, entitling the prison officials to qualified immunity in the inmate's civil right action. (South Dakota State Penitentiary)

U.S. District Court
DUE PROCESS
REVOCATION

Spellmon-Bey v. Lynaugh, 778 F.Supp. 338 (E.D. Tex. 1991), dismissed, 12 F.3d 1097. A prison inmate filed a pro se civil rights complaint alleging denial of due process in connection with a prison disciplinary proceeding. On recommendation by a magistrate judge that the inmate's claims be dismissed as frivolous, the district court found that the civil rights action would be remanded to a magistrate judge for determination as to whether the notice of disciplinary action provided to the prison inmate, which notified him of the offense with which he was charged but not of any of the specific acts allegedly supporting such a charge, was sufficient to satisfy the inmate's due process rights. The inmate's allegation that the notice was constitutionally deficient was not frivolous and

could not be summarily dismissed pursuant to a dismissal statute. It was also found that the prison disciplinary board could not, as a matter of due process, rely solely on the testimony of the charging officer regarding hearsay statements of an unidentified informer to support a revocation of the inmate's good time credits, absent some independent evaluation of the credibility and reliability of the informer. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
CREDIT FOR
TIME SERVED

U.S. v. Browning, 761 F.Supp. 681 (C.D. Cal. 1991). An inmate filed a motion to correct an illegal sentence, challenging the decision of the Federal Bureau of Prisons refusing to give him credit against his sentence for 34 days he spent at home awaiting trial. Treating the motion as a petition for habeas corpus, the U.S. District Court found that the Bureau of Prisons properly determined that the inmate was not "in custody" for purpose of credits against his sentence while he was confined to his home awaiting trial, though the inmate was precluded from leaving his home except for court appearances, visits to his lawyer to assist in his defense, or other absences approved at least 24 hours in advance, and the inmate was required to wear an ankle bracelet electronically connected to a privately operated monitoring center in order to assure his compliance with conditions of release. (Federal Bureau of Prisons)

U.S. District Court
EQUAL PROTECTION

Wickliffe v. Clark, 783 F.Supp. 389 (N.D. Ind. 1991). A defendant whose murder conviction was affirmed by the Indiana Supreme Court petitioned for habeas corpus. The U.S. District Court found that there is no basic constitutional right to guarantee good time credit for good behavior while incarcerated, although states may create such statutory rights, and the denial of credit to "lifers" does not deny due process or equal protection. (Indiana State Prison)

U.S. District Court
WAIVER BY
PRISONER

Woodson v. U.S. Dept. of Justice, 770 F.Supp. 25 (D. D.C. 1991). A prisoner sought a declaratory judgment to permit her to waive good time credits to which she was entitled and to serve the remainder of her sentence. The U.S. District Court found that the prisoner was entitled to waive the good time credit in order to serve the remainder of her sentence for religious reasons. As the plaintiff correctly points out, by statute, an inmate has the right to decline consideration for parole. (Federal Correctional Institute, Mariana, Florida)

1992

U.S. Appeals Court
REVOCATION

Markham v. Clark, 978 F.2d 993 (7th Cir. 1992). A state prisoner applied for federal habeas corpus relief, seeking restoration of good-time credit taken away from him in state prison disciplinary proceedings. The U.S. District Court denied the application, and the prisoner appealed. The court of appeals, affirming the decision, found that the state prisoner had failed to exhaust his state administrative remedies by failing to appeal the disciplinary decision to higher prison authorities as required by state corrections department regulations and was not entitled to federal habeas corpus relief. (Indiana Department of Corrections)

U.S. Appeals Court
GOOD TIME CREDIT

Poole v. Kelly, 954 F.2d 760 (D.C. Cir. 1992). Inmates brought habeas petitions challenging the failure to award good time credit pursuant to a statute. The U.S. District Court granted one petition, and another district court denied another inmate's petition, and the losing parties appealed. The court of appeals found that the inmates were not entitled to good time credit under the statute. The District of Columbia Good Time Credit Act did not supersede a provision of a statute providing for a 20-year minimum year period of incarceration prior to parole eligibility for persons convicted of first-degree murder. (District of Columbia)

1993

U.S. District Court
GOOD TIME CREDIT

Alexander v. Perrill, 836 F.Supp. 701 (D. Ariz. 1993). A former prisoner brought a *Bivens* action against prison officials, claiming that he sustained damages because of improper credit for time spent in a foreign prison. The district court found that the prison officials were liable to the prisoner because they failed to transmit to the proper authorities the prisoner's claim that his credits for time served in a German prison had been improperly taken into account in determining his sentence. The prisoner had repeatedly objected, but the defendants took no action with respect to his complaints except to state that the sentencing complied with the memorandum they had received from the Central Office, Bureau of Prisons in Washington, D.C. The court ruled that the prisoner was entitled to notice and a hearing before recalculation of his sentence could be put into effect. (Federal Correctional Institution, Tucson, Arizona)

U.S. Appeals Court
DUE PROCESS
GOOD TIME CREDIT

Booth v. U.S., 996 F.2d 1171 (11th Cir. 1993). A prisoner moved to vacate a sentence for a parole violation. The U.S. District Court denied the motion, and the prisoner appealed. The appeals court, affirming the decision, found that the Parole Commission's regulation stating that good time credits are used up upon release on parole and have no effect to shorten the period of imprisonment for violation of parole is reasonable and must be followed. (Georgia)

U.S. Appeals Court
EX POST FACTO

Chauvin v. Erickson, 998 F.2d 617 (8th Cir. 1993). An inmate who was convicted before Minnesota's enactment of a new requirement that prisoners perform work assignments, when available, to earn good-time credit, brought a civil rights action against prison officials. The U.S. District Court granted summary judgment to the defendants, and the inmate appealed. The appeals court, affirming the decision, found that Minnesota's new requirement did not violate the ex post facto clause as applied to the prisoner. The statutory work requirement did not change conditions for earning good-time credit, since, before the enactment of the work requirement, prison regulations imposed a disciplinary infraction for refusing a direct order to work. A prisoner who incurred a disciplinary infraction for refusing to work could not earn good-time credit for that day. (Minnesota)

U.S. Appeals Court
EX POST FACTO
GOOD TIME CREDIT

Ewell v. Murray, 11 F.3d 482 (4th Cir. 1993) U.S. cert. denied 114 S.Ct. 2112. State inmates filed a class action against the state department of corrections seeking injunctive relief from prison regulations which reduced good conduct time credits for inmates who refused to provide blood samples for a DNA information bank. The U.S. District Court entered summary judgment in favor of the state and the inmates appealed. The appeals court, affirming the decision, found that an amendment to the prison regulations increased penalties only for prospective violations and did not violate the ex post facto clause, even though the amendment reduced good conduct time credits for inmates who refused to provide blood samples. In addition, prison regulations punishing inmates who refused to provide blood samples by depriving them of good conduct time credits did not violate the inmates' due process rights, even assuming the good conduct time credit system had created a protected liberty interest. (Virginia Department of Corrections)

U.S. District Court
GOOD-TIME CREDIT
EX POST FACTO

Ewell v. Murray, 813 F.Supp. 1180 (W.D. Va. 1993). Inmates filed a Section 1983 action challenging the constitutionality of a Virginia prison regulation under which any inmate who refused to provide a blood sample for DNA analysis would not earn good-conduct allowance credits. The district court found that the due process clause did not create a liberty interest in earning a certain number of good-time credits. The Virginia prison regulation was not ex post facto law, even if the regulation made inmates' original sentences more burdensome, because reasonable prison regulations and punishment for infractions were not additional punishment as long as inmates' mandatory release dates were not postponed. (Buckingham Correctional Center and Brunswick Correctional Center, Virginia)

U.S. Appeals Court
GOOD-TIME CREDIT

Luck v. D.C. Parole Bd., 996 F.2d 372 (D.C. Cir. 1993). A prisoner brought a declaratory judgment action against the chairman of the Parole Board and the Director of the Department of Corrections, claiming that he had been improperly denied credit against his sentence for time spent on parole. The U.S. District Court entered judgment for the defendants and the inmate appealed. The court of appeals, affirming the decision, found that the prisoner was not entitled to credit for time spent on parole before the effective date of the Good Time Credit Act. Interpretation of the Act to deny parole credit did not violate the prisoner's equal protection rights. (District of Columbia)

U.S. Appeals Court
GOOD TIME CREDIT

United States v. Evans, 1 F.3d 654 (7th Cir. 1993). A defendant pled guilty in the U.S. District Court to federal drug conspiracy charges relating to the same conduct for which he was convicted under state law, and he appealed. The appeals court found that the district court properly refused to award the defendant good-time credit against his federal sentence for time spent in state custody. A federal good-time statute makes it clear that it is the Bureau of Prisons, not the court, which determines whether a federal prisoner should receive good-time credit. (Illinois)

U.S. Appeals Court
REVOCAION

U.S. v. Newby, 11 F.3d 1143 (3rd Cir. 1993) U.S. cert. denied 115 S.Ct. 111. Inmates were convicted before the U.S. District Court of knowingly and willfully impeding and interfering with a federal prison guard, and one defendant was additionally convicted of assaulting a federal prison guard. The inmates appealed. The court of appeals, affirming the decision, found that the prison disciplinary sanction of loss of good time credits was not so grossly disproportionate to the goal of maintaining order and discipline in prison so as to constitute a "punishment" within the meaning of the double jeopardy clause, and to bar subsequent prosecution. The court also found that the prisoners' loss of good time credits as a disciplinary sanction for assaulting prison guards could not be considered a mitigating factor in sentencing the prisoners after their conviction. The fact that the prisoners were sanctioned administratively did not show they were morally less culpable of the charged crime. (New Jersey Federal Prison)

U.S. Appeals Court
WAIVER BY
PRISONER

Woodson v. Attorney General, 990 F.2d 1344 (D.C.Cir. 1993). A prisoner sought a declaratory judgment to allow her to waive good time credits to which she was entitled and to serve the full remainder of her sentence for religious reasons. The U.S. District Court granted the prisoner's cross motion for summary judgment. On appeal, the court reversed the decision, finding that the commutation statute mandated that prisoners accumulate good time credits for months in which they have faithfully observed all rules and have not been subjected to punishment, thus creating a scheme in which a prisoner automatically accumulates credits for good conduct and is mandatorily released upon accumulation of a certain amount. (District of Columbia)

1994

U.S. District Court
DUE PROCESS
REVOCAION

Bellum v. Vose, 848 F.Supp. 1065 (D.Mass. 1994). An inmate sued for reinstatement of good-time credits and expungement of disciplinary confinement from his prison record. The district court found that the inmate's acquittal, under the "reasonable doubt" standard, of criminal assault and battery charges arising out of his altercation with another inmate did not mandate the reinstatement of good-time credits previously revoked based on disciplinary charges arising out of the same incident. The lower standard of proof applied at the disciplinary hearing, and the disciplinary charges, including fighting and disrupting order, differed from the criminal charges. In addition, requiring the inmate to defend the disciplinary charges against him prior to the prosecution of the criminal assault charges arising out of the same incident did not impermissibly burden the inmate's Fifth Amendment right against self-incrimination, by allegedly leading the inmate to remain silent at the disciplinary proceeding in order to assert his Fifth Amendment rights at the criminal trial. The inmate was not required to make an impermissible choice between defending himself at the disciplinary proceeding and preserving his Fifth Amendment privileges at trial. (Maximum Security Prison, Cedar Junction, Walpole, Massachusetts)

U.S. Appeals Court
GOOD-TIME CREDIT

Graham v. Lanfong, 25 F.3d 203 (3rd Cir. 1994). An inmate who had served a Virgin Islands sentence in a federal prison sought a writ of habeas corpus claiming that he was entitled to good time credits provided by federal law, rather than those applicable under a territorial statute against a concurrent eight-year territorial sentence. The U.S. District Court granted relief and the Government of the Virgin Islands appealed. The appeals court, affirming the decision, found that the inmate was entitled to good time credits provided by federal law, rather than those applicable under the territorial statute. The inmate was not entitled to good time credit under the Virgin Islands law for the same period. (Virgin Islands Bureau of Corrections)

U.S. District Court
RESTORATION

Losee v. Nix, 842 F.Supp. 1178 (S.D.Iowa 1994). An inmate brought a pro se Section 1983 action against prison officials, alleging violation of his constitutional rights in connection with his placement in investigative segregation. The district court found that the inmate's due process rights were not violated when he was placed in investigatory segregation for forty-one days. It was also found that the inmate had no right to receive the full amount of back pay or full credit for time served because a regulation providing for some back pay or credit for time served at the discretion of the warden did not establish a liberty or property interest in the full amount. (Iowa State Penitentiary)

U.S. Appeals Court
GOOD TIME CREDIT

Waletzki v. Keohane, 13 F.3d 1079 (7th Cir. 1994). A federal prisoner petitioned for habeas corpus relief to challenge the denial of good-time credits for work performance. The U.S. District Court denied relief, and the prisoner appealed. The court of appeals, affirming the decision, found that the arbitrary denial of good-time credits, resulting in the arbitrary lengthening of imprisonment, cannot be considered harmless or merely a technical violation and is within the habeas corpus jurisdiction of the district court. However, the federal court has no law to apply and is not equipped to evaluate a prisoner's work performance and his claim of arbitrary denial of good-time credits for work while identically situated prisoners received the credits. (Indiana Federal Prison)

1995

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
REMOVAL

Holmes v. Cooper, 872 F.Supp. 298 (W.D.Va. 1995). An inmate filed a civil rights action challenging the decision by prison officials to downgrade his good conduct allowance (GCA) status. The district court found that the inmate had no due process liberty interest in his GCA status which had been downgraded during an annual review. Although the inmate's numerical score placed him in one of four GCA levels, prison officials had wide discretion under Virginia regulations to reject the numerical score and override the assignment of status. (Tidewater Correctional Unit #22, Virginia)

U.S. District Court
RESTORATION
DUE PROCESS

Hundley v. McBride, 908 F.Supp. 601 (N.D.Ind. 1995). An inmate filed a habeas corpus petition seeking restoration of good time credits alleging defects in the disciplinary proceedings that resulted in the loss of credits. The district court denied the petition, finding that due process did not require prison officials in a disciplinary case to conduct scientific testing to confirm a correctional officer's direct observation of sexual contact. The court found that evidence supported the disciplinary board's finding that the inmate had engaged in sexual acts with another inmate. (Westville Correctional Center, Indiana)

1996

U.S. District Court
LIBERTY INTEREST
REVOCATION

Broussard v. Johnson, 918 F.Supp. 1040 (E.D.Tex. 1996). Prisoners filed a § 1983 action alleging that a disciplinary hearing violated their civil rights. The district court held that the action which challenged the fact and duration of confinement would be treated as a habeas corpus action. The court found that the prisoner's rights to procedural due process were violated by reliance on the credibility of a confidential informant without independent evaluation, and that competent evidence did not support a finding of guilt. The court noted that the prisoners were singled out from three shifts of 100 workers in an area in which bolt cutters were found, and that evidence did not support the finding that the prisoners were the persons responsible for hiding the bolt cutters. (Eastham Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
EQUAL PROTECTION
REVOCATION

Brown-El v. Virginia Parole Bd., 948 F.Supp. 558 (E.D.Va. 1996). A Virginia inmate filed a habeas corpus petition alleging the parole board unconstitutionally deprived him of statutory good time credits. The district court held that the inmate was not denied the credits in violation of due process because he violated parole following his early release through the use of the credits, and was ordered incarcerated for the unserved portion of his original term of imprisonment. The court found that the parole board's application of a new policy requiring parole violators to be incarcerated for the remainder of their sentence did not violate equal protection. The court also held that revoking parole as a punishment for a parole violation was not double punishment for a single offense in violation of double jeopardy. (Virginia Parole Board)

U.S. Appeals Court
REVOCATION
LIBERTY INTEREST

Hamlin v. Vaudenberg, 95 F.3d 580 (7th Cir. 1996). A prisoner filed a § 1983 suit alleging that a disciplinary proceeding deprived him of due process. The district court dismissed the complaint and the appeals court affirmed. The appeals court found that the loss of good-time credits was sufficient to allege a protectible liberty interest but that state postdeprivation remedies were adequate. (Green Bay Correctional Institute, Wisconsin)

U.S. Appeals Court
REVOCATION
DUE PROCESS

Meeks V. McBride, 81 F.3d 717 (7th Cir. 1996). An inmate filed a habeas corpus petition following a prison disciplinary board's decision to deprive him of good-time credits and to lower the rate at which he would earn good time in the future. The district court denied the petition and the inmate appealed. The appeals court reversed the lower court decision, finding that a challenged toxicology report was insufficient to support a finding that the inmate had smoked marijuana. The inmate produced exculpatory evidence that negated the reliability of the evidence the disciplinary board used to reach its decision--the toxicology report bore the inmate's name but listed an incorrect prisoner number. There was another inmate in the prison with the same name at the time the urine sample was taken and the two inmates had been confused on one previous occasion. However, the court found that a second disciplinary proceeding following acquittal on the first proceeding did not violate the double jeopardy clause. (Westville Correctional Center, Indiana)

U.S. District Court
REVOCATION
LIBERTY INTEREST

Reynolds v. Wolff, 916 F.Supp. 1018 (D.Nev. 1996). Two inmates brought a civil rights action against a prison warden and other officials, alleging violation of their constitutional rights in disciplinary proceedings in which their good-time credits were revoked. The district court granted summary judgment for the defendants finding that the written record of the proceeding indicated that the disciplinary committee's findings were based on "some evidence" and the inmates were therefore not denied due process. Written findings in one inmate's case indicated that the committee relied on an officer's report, and in the other inmate's case the committee relied on "officers testimony." The court also found that a Nevada statute that provided for the accumulation of good-time credits created a protectible liberty interest. (Nevada State Prison)

U.S. District Court
SENTENCE
RELEASE DATE

Wiggins v. Wise, 951 F.Supp. 614 (S.D.W.Va. 1996). An inmate filed a habeas corpus application seeking declaratory relief challenging the Bureau of Prisons (BOP) policy that denied her eligibility for an early release program. The district court held that the challenged section of the BOP program statement was a clear example of agency rulemaking and was therefore subject to judicial review, but that the determination of the inmate's eligibility for release would be left to the Bureau of Prisons. The inmate had challenged the BOP determination of which crimes were "crimes of violence" with regard to program eligibility. (Federal Prison Camp, Alderson, West Virginia)

U.S. District Court
LIBERTY INTEREST
REVOCATION

Burnell v. Coughlin, 975 F.Supp. 473 (W.D.N.Y. 1997). A state inmate filed a pro se § 1983 action seeking money damages for alleged due process violations relating to a prison disciplinary action. The district court granted summary judgment for the defendants, finding that the loss of one year's good time credits implicated a constitutionally protected liberty interest of real substance, but that the inmate could not pursue money damages under § 1983 without showing that the disciplinary decision had already been invalidated. The court noted that the proper procedure would be to attack the results of the disciplinary hearing directly by appeal, habeas corpus petition, or another collateral attack. The court also found that the inmate's request that the misbehavior report be expunged from his prison record was a form of relief only available by a habeas corpus petition, not under § 1983. (Attica Correctional Facility, New York)

U.S. Appeals Court
RESTORATION

Clarke v. Stalder, 121 F.3d 222 (5th Cir. 1997). A state inmate who was convicted of violating a Louisiana corrections rule that prohibited inmates from threatening employees with legal redress during a "confrontation situation" filed a § 1983 action alleging violation of his First Amendment free speech rights. The inmate also alleged that prison employees retaliated against him for exercising his right of access to courts. The district court declared the prison rule unconstitutional, ordered restoration of the inmate's good time credits, and denied the retaliation claim. All parties appealed. The appeals court held that a habeas corpus petition was the proper vehicle for the inmate to employ in pursuing his claim that he was entitled to damages and for the return of his good time credits. The appeals court found that the prison rule was facially invalid, and that the record supported the denial of the retaliation claim. The disputed rule provided, in part "DEFIANCE (Schedule B): ...No prisoner shall threaten an employee in any manner, including threatening legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation and certainly does not mean the actual composition or filing of a writ, suit, etc; threatening to write to the Secretary, the Warden, or other institutional officers is not a violation." (Work Training Facility at Pineville [Camp Beauregard], Louisiana)

U.S. Appeals Court
EX POST FACTO
RESTORATION

Hallmark v. Johnson, 118 F.3d 1073 (5th Cir. 1997). Several prisoners petitioned for habeas corpus relief raising a common challenge to a state directive that eliminated corrections officials' discretion to restore previously forfeited good time credits. The district court denied the petitions and the appeals were consolidated. The appeals court affirmed in part, dismissed in part, and remanded. The appeals court found that the directive did not result in an ex post facto violation and that the prisoners had no liberty interest in the restoration of their good time credits. The appeals court found that it lacked jurisdiction over one appeal because the district court failed to grant or deny a certificate of probable cause (CPC). Under the Antiterrorism and Effective Death Penalty Act (AEDPA), once the district court has denied a habeas corpus petitioner's application for a certificate of probable cause, the appeals court had no jurisdiction to hear an appeal from denial of habeas relief unless the appeals court granted CPC. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
DUE PROCESS
REVOCATION

Hayes v. McBride, 965 F.Supp. 1186 (N.D.Ill. 1997). An inmate petitioned for a writ of habeas corpus, challenging sanctions imposed in a prison disciplinary hearing. The district court granted the petition, finding that the inmate was denied due process. The court found that a demotion in the inmate's credit time-earning class and deprivation of his previously earned credit time were liberty interests that could not be deprived without due process. According to the court, the inmate's alleged admission that a yellow-orange substance found in his cell during a shakedown was alcohol was insufficient to establish that the inmate had possessed an intoxicant absent evidence establishing that the substance found in the cell was an intoxicant. (Westville Correctional Facility, Indiana)

U.S. District Court
DISCIPLINE

Hester v. McBride, 966 F.Supp. 765 (N.D.Ind. 1997). A state prison inmate petitioned for a writ of habeas corpus challenging a disciplinary proceeding. The district court held that the inmate's loss of earned credit time created a liberty interest that could not be deprived without due process, but that the inmate had received requisite due process protection during a conduct adjustment board's (CAB) hearing. The court found that sufficient evidence supported the CAB decision and that the inmate's due process rights were not violated by the CAB's refusal to administer polygraph examinations of witnesses, nor by the non-disclosure of confidential witnesses' identities or testimony. The court also held that the inmate could not maintain a claim of ineffective assistance based on the performance of a lay advocate in the disciplinary hearing. (Westville Correctional Facility, Indiana)

U.S. District Court
DUE PROCESS
REVOCATION

Husbands v. McClellan, 957 F.Supp. 403 (W.D.N.Y. 1997). An inmate brought a civil rights action seeking redress for an allegedly false disciplinary ticket issued against him and alleging due process violations in his prison disciplinary hearing. The court found that the inmate failed to state a claim for retaliation under the civil rights statute. The court held that the inmate's six-month confinement in segregated housing following a disciplinary hearing did not implicate a liberty interest under the Fourteenth Amendment so as to allow the inmate to maintain a civil rights action premised on alleged procedural due process violations in

the hearing. The court also found that the fact that the inmate's punishment included loss of one year of good-time credit was not sufficient to establish a liberty interest, where the guilty finding was eventually administratively reversed and the good-time credit was restored. (Southport Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Madison v. Parker, 104 F.3d 765 (5th Cir. 1997). A state prison inmate brought a § 1983 action against prison officials, alleging violation of his constitutional rights as the result of his punishment for misconduct. The district court dismissed the inmate's claims and the inmate appealed. The appeals court vacated and remanded, so that the district court could determine if the inmate was eligible under state law for mandatory supervised release based on good conduct credits and whether the statutory good conduct scheme created a liberty interest protected by due process. If a liberty interest was created the district court would determine whether imposition of the loss of 30 days of good conduct time satisfied due process. The court found that the imposition of 30 days of commissary restriction and 30 days of cell restriction as punishment for the inmate's misconduct did not implicate due process concerns. (Beto I Unit in Tennessee Colony, Texas)

U.S. Appeals Court
PRISONER SUICIDE

Mathis v. Fairman, 120 F.3d 88 (7th Cir. 1997). A detainee's mother brought a civil rights action against jail personnel following the detainee's suicide while in custody. The district court entered summary judgment for the personnel and the mother appealed. The appeals court affirmed, finding that personnel did not exhibit deliberate indifference to the threat of suicide. The court noted that jail staff were concerned enough about the detainee's strange behavior to have a paramedic speak with him, to have him evaluated psychologically, and in deference to his fear that someone was trying to kill him, to place him in a single cell. After a mental health specialist concluded that the detainee did not pose a threat to himself, he was returned to the general jail population. The mother had alleged that the jail failed to adequately staff the facility and to adequately train its employees. A newly-hired officer was responsible for supervising the 25 inmates on the non-aggressive protective custody tier on which the detainee was housed. The officer, on his first day on the job, initially noticed the detainee's strange behavior and alleges that he reported it to his supervisor. The officer was hired less than a week earlier, and had just completed a four or five-day orientation. The appeals court noted that while cadets like the officer may not have been trained in suicide prevention, the jail maintained a psychiatric unit for that purpose. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
DUE PROCESS
REVOCATION

Miller v. Selsky, 111 F.3d 7 (2nd Cir. 1997). A state inmate brought a civil rights action challenging his segregation in disciplinary confinement for 125 days. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court vacated and remanded, finding that the U. S. Supreme Court decision in Sandin v. Conner did not create a per se blanket rule that disciplinary confinement may never implicate a liberty interest. (Bare Hill Correctional Facility, New York)

U.S. Appeals Court
RESTORATION
DUE PROCESS

Ragan v. Lynch, 113 F.3d 875 (8th Cir. 1997). An Iowa prison inmate brought a § 1983 action against prison officials alleging violation of his rights in connection with a disciplinary hearing. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, upholding the district court's determination that the disciplinary committee erroneously interpreted a disciplinary rule, resulting in the inmate's loss of good time credits, but that this error did not constitute a due process violation entitling the inmate to damages. The court noted that since there was a state procedure available to remedy the committee's mistake, that error alone did not amount to denial of due process, and any injury suffered by the inmate was remedied when his good-time credits were restored by the state court. (Iowa State Penitentiary)

U.S. District Court
EQUAL PROTECTION

Raines v. State of Fla., 983 F.Supp. 1362 (N.D.Fla. 1997). Inmates brought an action under the Americans with Disabilities Act (ADA) alleging they were denied the maximum amount of incentive gain time because they were disabled. A state regulation deprives handicapped or disabled prisoners of job assignments, educational assignments, or other opportunities to earn the maximum amount of incentive gain time. The district court held that the regulation was not cruel and unusual punishment under the Eighth Amendment because it was adopted to serve as an incentive to prisoners not to feign illness and to work, if possible, not to punish prisoners because of a real disability or illness. But the court held that the regulation excluded persons with disabilities from enjoying the full opportunity to participate in the gain time "program" in violation of ADA. The court ruled that ADA applied to state prisons, and that the regulation created lesser opportunities for disabled prisoners, making only one of four statutory activities available to them. (Florida Department of Corrections)

U.S. Appeals Court
DUE PROCESS
REVOCATION

Sweeney v. Parke, 113 F.3d 716 (7th Cir. 1997). A state prisoner filed a habeas corpus petition challenging disciplinary sanctions imposed against him, including the loss of earned time credit. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was afforded due process in connection with his disciplinary hearing and that some evidence supported the disciplinary board's

decision. The court found that under Indiana law, state prison inmates have a protected liberty interest in earned good time credits. The court found that the prisoner was not entitled to more than the 24 hours he had been given to plan his defense, and that the prisoner did not request witnesses at the time he was notified of the disciplinary hearing. (Indiana State Prison)

U.S. District Court
GOOD TIME CREDIT

Warren v. Irvin, 985 F.Supp. 350 (W.D.N.Y. 1997). An inmate challenged his confinement in special housing that resulted from disciplinary determinations that were invalidated. The inmate had been found guilty of a disciplinary violation for attacking a corrections officer, but this determination was eventually reversed due to procedural errors. The district court held that the temporary loss of good-time credits and prison privileges, or confinement in a special housing unit for 161 days, did not implicate a liberty interest necessary to support a due process claim. The court also held that deprivations of food and water imposed on the inmate were not sufficiently serious to constitute cruel and unusual punishment under the Eighth Amendment. The inmate was deprived of one meal for violation of a requirement of returning trays and cups before receiving the next meal, and he was deprived of water because he was using it to flood the gallery. (Wende Correctional Facility, New York)

1998

U.S. Appeals Court
GOOD TIME CREDIT
LIBERTY INTEREST

Crowell v. Walsh, 151 F.3d 1050 (D.C. Cir. 1998). An inmate petitioned for habeas corpus to challenge his denial of good time credits. The district court denied the petition and the appeals court dismissed the inmate's appeal. The appeals court held that the inmate, who had been transferred under the Interstate Corrections Compact, had no due process liberty interest in any particular level of good conduct credits. (Maximum Security Facility, District of Columbia Department of Corrections)

U.S. District Court
REVOCATION

Husbands v. McClellan, 990 F.Supp. 214 (W.D.N.Y. 1998). An inmate alleged that a false disciplinary ticket was issued against him and that there were due process violations in his prison disciplinary hearing. The district court dismissed the case, finding that the temporary loss of privileges during a six-month confinement in a segregated housing unit following a disciplinary hearing did not implicate a liberty interest. The court also found that the fact that the inmate's punishment initially included the loss of one year of good-time credit was not sufficient to establish a liberty interest. According to the court, conditions in the special housing unit, although they were more restrictive than conditions imposed on the general prison population, did not implicate a liberty interest. (Southport Correctional Facility, New York)

U.S. Appeals Court
GOOD TIME CREDIT

Patterson v. Knowles, 162 F.3d 574 (10th Cir. 1998). A federal inmate petitioned for a writ of habeas corpus, claiming he was entitled to have good time credits earned prior to his parole credited against the term of incarceration that was imposed after revocation of his parole. The district court dismissed the petition and the appeals court affirmed. The appeals court held that the inmate was not entitled to a reduction in his parole violator term based upon good time he accumulated prior to release on parole. (United States Parole Commission)

U.S. Appeals Court
EQUAL PROTECTION

Stefanoff v. Hays County, Tex., 154 F.3d 523 (5th Cir. 1998). An inmate challenged denial of good time credits in a civil rights action. The district court denied summary judgment for the defendants. The appeals court dismissed in part and reversed in part. The appeals court held that the inmate had adequately alleged an equal protection violation because he was denied good time credit simply because he had been sentenced by a jury. The sheriff had determined that the jury decision more closely reflected the "conscience of the community" than a decision of an elected judge, which the appeals court found to be arbitrary and irrational. However, the court held that the sheriff had a legitimate basis for denying good time credit based on the inmate's disruptive activities. The inmate had also claimed that he was denied good time credit in retaliation for engaging in a hunger strike and corresponding with the media, in violation of his First Amendment rights. The court held that a prisoner's hunger strike may be protected by the First Amendment if it was intended to convey a particularized message. But the court found that the inmate's activities were sufficiently disruptive that the defendant had a legitimate penological interest in curtailing them, noting that the inmate had retained other reasonable and effective methods of communicating his views. The appeals court concluded that the sheriff was entitled to qualified immunity. (Hays County Jail, Texas)

U.S. District Court
REMOVAL

Thomas v. McBride, 3 F.Supp.2d 989 (N.D.Ind. 1998). A state prison inmate petitioned for habeas corpus relief challenging the loss of this good time credits at a disciplinary hearing. The district court denied the petition, finding that a valid chain of custody for a urine sample was established so as to satisfy due process. The court found that the inmate's claims that prison officials did not follow a state Department of Corrections executive directive on how an inmate urine sample is to be collected was not cognizable in habeas corpus. According to the court, a laboratory report which listed several drug classes,

each of which was marked "negative" except for cannabinoids (THC) which was marked "positive," was constitutionally sufficient for the purpose of reporting test results used in a prison disciplinary action. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
REVOCATION
DUE PROCESS

Whitlock v. Johnson, 153 F.3d 380 (7th Cir. 1998). An inmate brought class action claims against a prison under § 1983 alleging due process violations because he was denied the right to call witnesses during a disciplinary hearing. The district court entered judgment for the plaintiff class and enjoined the application of the prison's witness policy. The appeals court affirmed in part and vacated in part. The appeals court held that the prison's policy of denying virtually all requests for live witnesses at disciplinary hearings that could result in revocation of an inmate's good-time credits, except where a witness already happened to be present, lacked the refinement required to survive constitutional muster under the due process clause. (Stateville Correctional Center, Illinois)

1999

U.S. District Court
LIBERTY INTEREST
REVOCATION

Frazier v. Hesson, 40 F.Supp.2d 957 (W.D.Tenn. 1999). An inmate challenged prison discipline practices in a habeas corpus petition. The district court dismissed the petition, finding that the inmate's due process rights were not violated when he was accused of a disciplinary offense, confined in involuntary administrative segregation and transferred to a maximum security prison. The court held that reclassification and transfer to a maximum security facility and confinement in administrative segregation did not deprive the inmate of any due process liberty interests, even if the assignment to administrative segregation affected his ability to earn sentencing credits. The court noted that a state law that requires a due process hearing prior to extensions in an inmate's release eligibility date was merely a state law procedural requirement and did not create a liberty interest protected by the Due Process clause. (West Tennessee State Prison)

U.S. Appeals Court
EQUAL PROTECTION
GOOD TIME CREDIT
PRE-SENTENCE
DETENTION

MacFarlane v. Walter, 179 F.3d 1131 (9th Cir. 1999). After their state habeas petitions were denied, state prisoners petitioned for federal habeas corpus relief, challenging two counties' "good conduct" and "good performance" policies as they were applied to them. The district court granted summary judgment for the respondent corrections officials, but the appeals court reversed and remanded. The appeals court held that there was an equal protection violation in the counties' allowance of lesser good time credits for defendants who were detained pretrial in county jails because of their financial inability to post bail, than that allowed for defendants who were able to wait to serve their sentences until after sentencing to a state correctional facility. The counties' early release policies limited presentence detainees to a maximum good-conduct credit of 15% of the sentence imposed; the court noted that persons who had posted bail and served their entire sentence at a state correctional facility could end up serving 23 days less on a five- to six-year sentence. The court upheld the policies under which pretrial detainees were not eligible for participation in work and other programs through which they could earn good-performance credit, finding the counties had established a strong rational connection between the legislative means and purpose of protecting community safety. (Pierce and Clark County Jails, Washington)

U.S. District Court
EQUAL PROTECTION
GOOD TIME CREDIT

Prevard v. Fauver, 47 F.Supp.2d 539 (D.N.J. 1999). Inmates serving indeterminate sentences under a former New Jersey sex offender statute sued the state alleging that denial of work and commutation credits available to defendants under a new criminal code was unconstitutional. The district court held that the denial of credits did not violate due process, equal protection, or prohibitions against ex post facto laws and cruel and unusual punishment. The court held that offenders serving indeterminate sentences under a former sex offender law were not similarly situated to persons serving determinate sentences under a new criminal code. The court noted that even if the state's denial of work and commutation credits to persons convicted of sex offenses affected a liberty interest, the state had a rational basis, consistent with due process, for denying the credits. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court
REVOCATION
PRE-SENTENCE
DETENTION

Resnick v. Adams, 37 F.Supp.2d 1154 (C.D.Cal. 1999). A presentence detainee filed a habeas corpus petition alleging that 27 days of good time credit were unlawfully taken from him as a sanction for violating a prison regulation. He petitioned to have the 27 days restored. The district court dismissed the petition, finding that denial of good time credit as a sanction for violating a prison regulation during a detainee's presentence incarceration was not prohibited, if the sanction is not excessive in light of the seriousness of the violation. While detained in a federal detention center a routine drug screening had detected morphine in the detainee's urine. (Federal Detention Center at Dublin, California, and United States Penitentiary at Lompoc, California)

U.S. District Court
REVOCATION

Woodley v. Department of Corrections, 74 F.Supp.2d 623 (E.D.Va. 1999). An inmate petitioned for a writ of habeas corpus challenging his parole revocation and a policy of the parole board that required him to serve the total remaining time of his sentence without consideration of good time allowances he had earned. The district court dismissed the action, finding that the revocation of the inmate's parole for failing to agree to pay the costs of living at a halfway house presented no cognizable constitutional grounds for habeas relief. The court found that the inmate had received

all the constitutional due process to which he was entitled and that a policy change by the board did not violate the inmate's equal protection rights or create an ex post facto application of the law. The parole board had changed its policy to require that all persons violating parole after a certain date must serve the entire unserved portion of the term originally imposed by the court. (Virginia Parole Board and Onesimus House, Virginia)

2000

U.S. Appeals Court
EX POST FACTO

Abed v. Armstrong, 209 F.3d 63 (2nd Cir. 2000). A state prisoner petitioned for habeas corpus relief and the district court granted summary judgment against the prisoner. The appeals court affirmed, finding that a state prison administrative directive making inmates classified as safety threats ineligible to earn good time credit did not violate the Ex Post Facto Clause. The court noted that the prisoner had no protected liberty interest in the opportunity to earn good time credit. According to the appeals court, the inmate received all process he was due before being classified as a safety threat because a hearing was held before the inmate was classified, his status was reviewed every six months, and he had the right to request reconsideration of his status at any time in writing. (Connecticut Department of Corrections)

U.S. Appeals Court
DUE PROCESS

Chambers v. Colorado Dept. of Corrections, 205 F.3d 1237 (10th Cir. 2000). An inmate challenged his classification as a sex offender by a state corrections department and the district court granted summary judgment to the department. The appeals court affirmed in part and reversed in part. The appeals court held that the requirement that the offender participate in a sex offender treatment program was not an ex post facto violation, but that the inmate had a procedural due process right to a hearing before being classified as a sex offender. According to the court, the inmate had a protected liberty interest in not being labeled as a sex offender. (Colorado Department of Corrections, Sex Offender Treatment Program)

U.S. Appeals Court
RELOCATION

Henson v. U.S. Bureau of Prisons, 213 F.3d 897 (5th Cir. 2000). A federal prisoner petitioned for habeas corpus relief challenging the loss of good time credit as the result of a disciplinary proceeding. The district court denied the petition and the appeals court affirmed. The appeals court held that the prisoner did not have a due process right to a second test of the residue from his pipe that had tested positive for marijuana, after a urinalysis test of the prisoner came back negative. The inmate had lost fourteen days of good time credit and lost visiting, commissary and telephone privileges for thirty days. (Federal Bureau of Prisons)

U.S. Appeals Court
DUE PROCESS

Malchi v. Thaler, 211 F.3d 953 (5th Cir. 2000). A state prisoner filed a petition for habeas corpus relief based on the alleged denial of his due process rights in connection with a disciplinary proceeding. The district court granted the petition and the state appealed. The appeals court reversed, finding that the prisoner's thirty day loss of commissary privileges and cell restriction as the result of a disciplinary action did not implicate due process concerns. The court also found that the effect of the change in the prisoner's good-time earning status upon the timing of his release was too speculative to afford him a constitutionally recognized right to a particular time-earning status. (Telford Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
DUE PROCESS
REVOCAION

Mayers v. Anderson, 93 F.Supp.2d 962 (N.D.Ind. 2000). A state prisoner petitioned for a writ of habeas corpus challenging the loss of good time credits. The district court found that the prison adjustment board violated the prisoner's due process rights when it failed to review a security videotape which the prisoner claimed would establish his innocence, or to state on the record that viewing the tape would be hazardous to institutional safety or correctional goals. According to the court, a state prisoner had to be given the opportunity to request documentary and videotape evidence either at the screening stage of prison disciplinary proceedings or at the hearing itself. The inmate had been deprived of ninety days of earned good time credit. (Indiana State Prison)

U.S. Appeals Court
EX POST FACTO
REVOCAION

Smith v. Scott, 223 F.3d 1191 (10th Cir. 2000). A prison inmate sought a writ of habeas corpus challenging the decision of a state corrections department that rescinded some of his earned time credits. The district court denied the petition, but the appeals court reversed and remanded. The appeals court held that retroactive application of an amendment to the state's earned time credit regulation violated the ex post facto clause. (Oklahoma Department of Corrections)

U.S. Appeals Court
LIBERTY INTEREST

Zimmerman v. Tribble, 226 F.3d 568 (7th Cir. 2000). An inmate brought a pro se civil rights action against state prison officials complaining about prison conditions. The district court dismissed the complaint under the Prison Litigation Reform Act (PLRA) and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the inmate did not state a claim for violation of due process in his transfer to a prison that did not offer programs enabling him to earn good time credits. The inmate had been transferred from a prison that had vocational training and substance abuse programs to a prison which did not have such programs. The inmate had alleged that had he completed the programs at the first prison he would have earned good time credits under state law, but the court noted that it was not inevitable that the inmate would actually earn the good time credits. (Wabash Valley Correctional Center, Indiana)

U.S. Appeals Court
REVOCATION
EX POST FACTO

Warren v. Baskerville, 233 F.3d 204 (4th Cir. 2000). A state prisoner petitioned for habeas relief and was denied by the district court. The appeals court affirmed, finding that the state parole board did not violate the Ex Post Facto clause when, upon revoking mandatory parole, it also revoked previously-earned good time credits. The court noted that the parole board possessed the authority to revoke the good time credits under a statute in effect before the prisoner committed his offenses, even though the Board may have relied on a subsequently-enacted statute that more explicitly granted the same authority. (Virginia Parole Board)

2001

U.S. Appeals Court
REVOCATION

Closs v. Weber, 238 F.3d 1018 (8th Cir. 2001). A federal district court ordered that a prisoner's good-time credits be restored, after they had been revoked, along with his conditional parole, for refusal to take psychotropic medication. The appeals court reversed and remanded, finding that neither the revocation of conditional parole, nor the reduction of good-time credits as part of the revocation, violated clearly established federal law or was unreasonable. The prisoner had been diagnosed with schizophrenia and was required to take psychotropic medication as a parole condition. (South Dakota State Penitentiary)

U.S. Appeals Court
REVOCATION
EQUAL PROTECTION

Gonzales-Perez v. Harper, 241 F.3d 633 (8th Cir. 2001). A prison inmate who was a Spanish-speaking native of Cuba brought a § 1983 action against a prison hearing officer who conducted disciplinary hearings which led to the revocation of the inmate's good time credits, alleging that failure to provide an interpreter for all hearings had violated his constitutional rights. The district court dismissed the action and the appeals court affirmed. The appeals court noted that the inmate had received the assistance of an interpreter every time he had requested it and that an administrative law judge who presided over numerous hearings had testified that he believed the inmate's English skills were sufficient to understand and respond to the proceedings. (Iowa State Penitentiary)

U.S. District Court
REVOCATION

Hinebaugh v. Wiley, 137 F.Supp.2d 69 (N.D.N.Y. 2001). A federal prisoner filed a habeas corpus petition seeking restoration of good time credits allegedly lost due to retaliatory filing of incident reports by prison personnel. The prisoner moved to have the officials compelled to undergo polygraph examinations and the defendants moved to dismiss. The district court denied both motions, finding that the matter was one in which the prisoner challenged both the fact and duration of his confinement, which could properly form the basis for a federal habeas corpus petition. (Federal Correctional Institution, Ray Brook, New York)

U.S. Appeals Court
DUE PROCESS

Montgomery v. Anderson, 262 F.3d 641 (7th Cir. 2001). A state prisoner filed for habeas corpus relief alleging that the state had violated the Due Process Clause of the Fourteenth Amendment when it placed him in disciplinary segregation and reduced his credit-earning class. The district court denied the petition and the appeals court affirmed. The appeals court held that the alleged inadequacies of the prison disciplinary board's finding of facts did not deny the prisoner due process, where the board explicitly relied on a conduct report and investigation which supplied details. The court noted that state prisoners have "more than a subjective hope for good-time credit" in a system that initially puts every prisoner in a class which allows good-time credit to accrue unless there is a violation of an enumerated rule. (Indiana State Prison)

U.S. District Court
GOOD TIME CREDIT

Moore v. Hofbauer, 144 F.Supp.2d 877 (E.D.Mich. 2001). A state parolee petitioned for habeas corpus relief alleging that his parole revocation hearing was not timely and that a warden had improperly rescinded his good time credits. The district court denied the petition. The district court held that the state warden's discretionary decision not to award special good time sentence credits to the parole absconder, for the period that he was at large in the community and tested positive for drugs, did not violate the parolee's due process rights. The court found that the final hearing before revocation of parole, which was held two months after the parolee was taken into custody on a parole violator warrant, was reasonably timely even though a state law required the hearing to be held within 45 days. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
GOOD-TIME CREDIT

Pacheco-Camacho v. Hood, 272 F.3d 1266 (9th Cir. 2001). A federal prisoner sought review of the determination by the federal Bureau of Prisons (BOP) regarding good time credits to which he was entitled. The district court denied the petition and the appeals court affirmed. The appeals court upheld the BOP procedure that used the amount of time actually served by the prisoner, rather than the sentence imposed, as the basis for prorating good time credit available to the prisoner in his last year of imprisonment. (Federal Correctional Institution, Sheridan, Oregon)

2002

U.S. Appeals Court
REVOCATION
DUE PROCESS

Espinoza v. Peterson, 283 F.3d 949 (8th Cir. 2002). A federal inmate sought judicial review of a prison disciplinary proceeding in which he lost 13 days of "good time" credit for fighting with another inmate, alleging his due process rights were violated in his disciplinary hearing. The district court denied habeas relief and the inmate appealed. The appeals court affirmed, finding that the refusal of prison authorities to disclose the identity of a confidential informant did not violate the inmate's procedural due process rights. The court also held that officials' refusal to transport a prisoner, who allegedly was involved in a fight with the inmate, to testify at the disciplinary hearing did not violate the inmate's procedural due process rights. The court noted

that the hearing was delayed to obtain a written statement from the prisoner and that transporting the prisoner posed an obvious security risk. (Federal Correctional Institute at Sandstone, Minnesota)

U.S. District Court
GOOD TIME

Hoskins v. McBride, 202 F.Supp.2d 839 (N.D.Ind. 2002). A state prisoner filed for a writ of habeas corpus, challenging revocation of earned good time credits and demotion in his credit time earning class, following a disciplinary proceeding. The district court denied the petition, finding that prison officials did not deny the prisoner due process by failing to compel witnesses to name a "certain offender" named in a tip regarding drug trafficking, nor by denying him permission to view security videos and other physical evidence. The court noted that while prisoners have the right to call witnesses to testify on their behalf at disciplinary hearings when it is consistent with institutional safety and correctional goals, but that this is not an unlimited right. (Indiana State Prison in Michigan City)

U.S. District Court
REVOCATION
DUE PROCESS

McGoue v. Janecka, 211 F.Supp.2d 627 (E.D.Pa. 2002). A prison inmate brought a § 1983 action claiming that authorities violated his due process rights by removing him from a work release program without notice or hearing. The district court dismissed the case, finding that the inmate did not have a protectable liberty interest sufficient to support a due process deprivation claim. The inmate had been participating in a court-ordered work release program when routine testing identified that he had used alcohol. The inmate argued that he was a barber and was required to handle alcohol-based materials throughout his work day. After a week of investigation the inmate was allowed to return to his position at the barber shop. Three days later a judge removed the inmate from the program and revoked his good time. (George Washington Hill Correctional Facility, Pennsylvania)

U.S. District Court
GOOD TIME CREDIT

Mitchell v. Massachusetts Dept. of Correction, 190 F.Supp.2d 204 (D.Mass. 2002). A prisoner brought an action against corrections defendants under Title II of the Americans with Disabilities Act (ADA) and § 1983, alleging that he was denied the opportunity to participate in certain inmate programs during his incarceration, based upon the fact that he suffered from diabetes and a heart condition. The district court denied the plaintiff's motions for injunctive and declaratory relief but did not dismiss the action, finding that the complaint was sufficient to state a claim under Title II of the ADA. The prisoner alleged he was denied participation in various prison work and educational programs due to his "medical condition," which the court found was sufficient to show that corrections officials "regarded" him as disabled. The district court held that the prisoner's claims under Title II and the Rehabilitation Act, seeking monetary damages for sentence-reduction credits that he alleged were improperly denied, would be allowed to proceed. The prisoner had been denied permission to participate in welding, barbering and culinary programs and classes. The prisoner alleged that had he successfully participated in the programs, he would have been granted "good time" credits that would have reduced his sentence by two and one-half days for every month he was confined. (North Central Correctional Facility, Massachusetts)

U.S. Appeals Court
RESTORATION

Moffat v. Broyles, 288 F.3d 978 (7th Cir. 2002). A state prisoner who had been found guilty by prison authorities of attempted trafficking, and who lost 180 days of good time credit as a result, petitioned for a writ of habeas corpus. The district court denied the petition and the appeals court affirmed. The appeals court held that evidence in the prison disciplinary proceeding was sufficient to support the guilty finding. (Indiana)

U.S. District Court
EQUAL PROTECTION

Nusbaum v. Terrangi, 210 F.Supp.2d 784 (E.D.Va. 2002). Inmates sued prison officials, claiming that conditioning good time credits on attending a "Therapeutic Community Program" that emphasized religion was a violation of the Establishment Clause. The district court found the program to be in violation. Following changes in the program, the inmates again sued, alleging the same violation. The district court granted summary judgment for the inmates, in part, finding that the removal of overt references to religion did not cure the Establishment Clause problems, but that the officials were entitled to qualified immunity due to their good faith, but unsuccessful, efforts to secularize the program. According to the court, the program violated the Establishment Clause because it impliedly espoused religion, through an emphasis on spirituality and encouragement to inmates to turn their lives over to a "higher power." The court noted that while attendance was voluntary, inmates were coerced into attending due to a lack of alternatives for acquiring good time credits. (Indian Creek Correctional Center, Virginia)

U.S. Appeals Court
RESTORATION

Portley-El v. Brill, 288 F.3d 1063 (8th Cir. 2002). An inmate brought a § 1983 action against prison officials alleging that his rights to due process and equal protection had been violated by disciplinary proceedings. The district court dismissed the case and the appeals court affirmed. The appeals court held that the inmate could not bring a § 1983 action seeking the restoration of 45 days of good time credit, because habeas corpus was the exclusive federal remedy for a state prisoner seeking restoration of good time credits. (Colorado Department of Corrections)

U.S. Appeals Court
GOOD TIME CREDIT

Searcy v. Simmons, 299 F.3d 1220 (10th Cir. 2002). An inmate brought a § 1983 action against prison officials, challenging reduction of his privileges following his refusal to participate in a sexual abuse treatment program. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the adverse consequences faced by the inmate for refusing to make admissions required for participation in the treatment

program were not so severe as to amount to compelled self-incrimination. The court noted that the prisoner's loss of privileges and the opportunity to earn future good time credits was not punishment for his refusal to make the admissions, but rather were consequences of his inability to complete the program. The appeals court also held that the state's act of sending the inmate's property to his relatives without his consent did not violate the inmate's due process rights, although the inmate claimed that his relatives were not likely to return his property. The inmate had refused to indicate where his property should go before the state decided to send it to his relatives. The court noted that there is a difference between the right to own property, and the right to possess property while in prison. (Hutchinson Correctional Facility, Kansas)

2003

U.S. Appeals Court
EX POST FACTO

Hunter v. Avers, 336 F.3d 1007 (9th Cir. 2003). A state prisoner filed a federal habeas corpus petition, alleging that application of a change in parole regulations removed his right to restoration of lost good time, in violation of the ex post facto clause. The district court granted the writ and the appeals court affirmed. The appeals court held that application of the amended prison regulations to deny the inmate restoration of good time credits violated the ex post facto clause, where the regulations were not amended until after the inmate's offense. The court found that a parole regulation in effect at the time of the infraction was not rendered invalid by a change in the statute governing the good time system, because the new regulation made restoration of forfeited credits discretionary, rather than mandatory, and did not prohibit the restoration of good time. (California Department of Corrections)

U.S. Appeals Court
DUE PROCESS

Johnson v. Ward, 76 Fed.Appx 858 (10th Cir. 2003) [unpublished]. A state prisoner brought an in forma pauperis § 1983 action against prison officials, seeking monetary and injunctive relief, alleging that his termination from his prison job, which reduced his ability to earn good time credit, violated his due process rights. The district court dismissed the action as frivolous and the appeals court affirmed. The appeals court held that the prisoner did not have a liberty interest in his prison job, or in his ability to earn good time credit, so that his termination from his job for misconduct did not violate due process, regardless of the reason for the termination or the alleged inadequacy of the prison's misconduct appeal process. The prisoner had been working in the prison kitchen and was charged with misconduct for an alleged battery. The misconduct charged caused him to be terminated from his job, and reduced his ability to earn good-time credits and cost him 28 days of good time credit. Following a hearing, the misconduct charge was dismissed for failure to comply with due process. (Oklahoma State Penitentiary)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Northern v. Hanks, 326 F.3d 909 (7th Cir. 2003). A state prisoner whose demotion to a lower credit-earning class was affirmed by a prison disciplinary reviewing authority, petitioned for a writ of habeas corpus. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that while the prisoner had a protected liberty interest in his credit-earning class, his due process rights were not violated. (Indiana Correctional Industrial Facility)

U.S. District Court
PRE-SENTENCE
DETENTION

Torres v. Stewart, 263 F.Supp.2d 463 (D.Conn. 2003). A state inmate sued prison officials, alleging that as a pretrial detainee he was designated as a security risk without a hearing, and confined in segregation in violation of his due process rights. The inmate sought damages and the restoration of forfeited good time credits. The district court entered summary judgment in favor of the defendants. The court held that the inmate's request for restoration of good time credits was not cognizable under § 1983, and that as a pretrial detainee, he had not protected liberty interest in his classification. The court noted that the classification was not punishment proscribed by due process principles. The detainee had received a notice of his hearing two days prior to its scheduled date, declined to present witnesses, declined the assistance of an advocate, admitted to being a soldier for a gang, was identified as a regional commander in the gang, and had been arrested for the murder of a rival gang member. (Northern Correctional Institution, Connecticut)

U.S. District Court
REVOCAION

Tyler v. McCaughtry, 293 F.Supp.2d 920 (E.D.Wis. 2003). A state prisoner filed a petition for a writ of habeas corpus, claiming that his due process rights were violated when a prison disciplinary committee revoked his good time credits. The state moved to dismiss and the district court denied the motion. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's legal resources were the cause for the petitioner's default of federal claims in state court. (Dodge Correctional Institution, Wisconsin)

2004

U.S. Appeals Court
REVOCAION

Brown v. Braxton, 373 F.3d 501 (4th Cir. 2004). A prisoner petitioned for federal habeas corpus relief from the loss of good time credits in a prison disciplinary hearing. The district court denied relief and the prisoner appealed. The appeals court affirmed, finding that the prison disciplinary hearing officer's refusal to allow the prisoner to call a fellow inmate as a live witness at a hearing was not contrary to, or an unreasonable application of clearly established federal law on the due process rights of inmates. The court noted that an inmate has a qualified right to call witnesses and present documentary evidence in his defense, but only when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. (Red Onion State Prison, Virginia)

- U.S. Appeals Court
GOOD TIME CREDIT
- Glascoc v. U.S., 358 F.3d 967 (D.C.Cir. 2004). Prisoners who were serving indeterminate sentences of at least 15 years to life petitioned for habeas relief seeking the deduction of good time credits from their maximum sentences of life imprisonment. The district court denied the petition and the prisoners appealed. The appeals court affirmed, finding that life sentences were indeterminate and were therefore not capable of reduction in accordance with the pertinent statute. The court began its decision by asking "Precisely how long is an individual's life span minus, say, five years and 10 days? One cannot give a firm answer if the person is still alive." (District of Columbia)
- U.S. District Court
GOOD TIME CREDIT
- Jackson v. Ashcroft, 347 F.Supp.2d 924 (D.Or. 2004). A federal prisoner petitioned for a writ of habeas corpus, challenging the federal Bureau of Prisons' (BOP) computation of his good-time credits. The district court denied the petition, finding that the BOP regulation that used the amount of time actually served by the prisoner as the basis for prorating good-time credits, rather than the sentence imposed, was a reasonable interpretation of the statute governing the allocation of good-time credits. (Federal Bureau of Prisons, Oregon)
- U.S. District Court
DUE PROCESS
- Pizarro Calderon v. Chavez, 327 F.Supp.2d 131 (D.Puerto Rico 2004). A federal prisoner sought a writ of habeas corpus, challenging the refusal of the federal Bureau of Prisons to reduce his sentence and loss of good time credits as the result of a prison disciplinary determination. The district court denied the prisoner's petition. The court held that the Bureau's decision not to reduce the prisoner's sentence upon his completion of a substance abuse program did not violate due process. The court also found that the prisoner was not prejudiced by any violation of his due process rights when he was not allowed to call a physician as a witness at his disciplinary hearing. The court noted that a prisoner has no absolute right to call live witnesses at a disciplinary hearing and that prison officials have wide discretion to refuse to call witnesses who are irrelevant, unnecessary, or who pose a security concern. The court cautioned that a prison policy would not withstand due process scrutiny if the prison employed a blanket ban on calling witnesses other than staff, rather than evaluating requests on a case-by-case basis. (Metropolitan Detention Center, Guaynabo, Puerto Rico)
- U.S. Appeals Court
LIBERTY INTEREST
DUE PROCESS
- Richards v. Dretke, 394 F.3d 291 (5th Cir. 2004). The district court granted habeas corpus to an inmate who challenged a guilty finding against him in a prison disciplinary hearing, and the state appealed. The appeals court reversed, finding that the evidence against the prisoner was more than sufficient to meet constitutional due process requirements for finding him guilty. The court noted that the evidence included an offense report and confidential report of the investigating officer, and the prisoner's own admissions. Identities of all of but one of the witnesses were known to the hearing officer and the prisoner was undisputedly present in the dayroom at the time of the incident. The court noted that denial of good-time credits created a liberty interest protected by procedural due process, where the prisoner was eligible under state law for release to mandatory supervision at a date determined in part by his accrued good conduct time. (Texas Department of Criminal Justice, Correctional Institutions Division)
- U.S. District Court
GOOD TIME CREDIT
- Sash v. Zenk, 344 F.Supp.2d 376 (E.D.N.Y. 2004). A federal prisoner petitioned for habeas relief alleging that the federal Bureau of Prisons (BOP) had improperly applied a federal statute that governed calculation of good time credits. The district court denied the petition, finding that the calculation of good time credits based on time served, as opposed to the sentence imposed, was a reasonable interpretation of the statute that permitted an inmate to earn up to 54 days of good time credit per year. (Federal Bureau of Prisons, New York)
- U.S. Appeals Court
EQUAL PROTECTION
- Wirsching v. Colorado, 360 F.3d 1191 (10th Cir. 2004). A convicted sex offender who refused to comply with the requirements of a treatment program filed a § 1983 claim. The district court granted summary judgment against the offender and he appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that prison officials did not violate the offender's rights of familial association and his due process rights by refusing to allow visits between his child and himself due to his refusal to comply with the requirements of the treatment program. The court found that the offender's Eighth Amendment rights were not violated by a requirement that he participate in a treatment program that required him to admit that he had committed a sex offense, or forego visitation privileges with his child and the opportunity to earn good time credits at the higher rate available to other prisoners. The department of corrections had a policy that inmates who refuse to participate in labor, educational or work programs, or who refuse to undergo recommended treatment programs, are placed on a Restricted Privileges Status. Because of his placement in Restricted Privileges Status, the offender: (1) could not have a television or radio in his cell; (2) could not use tobacco; (3) had no canteen privileges; (4) had certain personal property removed from his cell; (5) could not engage in recreation with other prisoners; and (6) was required to wear orange pants. (Colorado Department of Corrections)
- 2005
- U.S. Appeals Court
GOOD TIME CREDIT
- Brown v. McFadden, 416 F.3d 1271 (11th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus based on an alleged error in the calculation of his good conduct time (GCT). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding

that it would defer to the regulation promulgated by the federal Bureau of Prisons that interpreted the phrase “term of imprisonment” to mean actual time served rather than the sentence imposed. (Federal Bureau of Prisons, Georgia)

U.S. District Court
DUE PROCESS

Harris v. Meulemans, 389 F.Supp.2d 438 (D.Conn. 2005). An inmate brought a § 1983 action against a warden and corrections officials to challenge, as a violation of procedural due process, a hearing that resulted in his classification as a “Security Risk Group Member.” The district court dismissed the action for failure to state a claim. The court held that an inmate has no due process liberty interest in a particular security classification, accrual of good time credits, or placement in a less-restrictive half-way house or work-release setting. (Cheshire Correctional Institution, Connecticut)

U.S. Appeals Court
GOOD-TIME CREDIT

Moreland v. Federal Bureau of Prisons, 431 F.3d 180 (5th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus on the theory that her good time credits had been improperly calculated. The district court granted the petition and the Federal Bureau of Prisons (BOP) appealed. The appeals court reversed and remanded. The court held that the phrase “term of imprisonment” as used in the statute that permits a federal prisoner to earn up to 54 days of good time credit at the end of each year of imprisonment, unambiguously referred to the actual time served in prison, not to the sentence imposed. The court found that the BOP had properly awarded credit only for each year served. (Federal Prison Camp, Bryan, Texas)

U.S. Appeals Court
GOOD TIME CREDIT

Mujahid v. Daniels, 413 F.3d 991 (9th Cir. 2005). A federal prisoner filed a petition for a writ of habeas corpus, challenging the calculation of his good time credit by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court affirmed. The court held that it would defer to the BOP’s interpretation of the good time credit statute, which interpreted the ambiguous phrase “term of imprisonment” to mean actual time served. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
GOOD TIME CREDIT

Perez-Olivo v. Chavez, 394 F.3d 45 (1st Cir. 2005). A federal prisoner challenged the calculation of his good time credit by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that Congress implicitly delegated authority to interpret the ambiguous phrase “term of imprisonment” to the BOP and that the prisoner was not entitled to good time credit based on his entire 10-year sentence, but rather to 54 days for each full year actually served. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
GOOD TIME

Petty v. Stine, 424 F.3d 509 (6th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus challenging the manner in which the Bureau of Prisoners calculated his good time credit. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed, finding that the Bureau reasonably interpreted the statute by awarding good time based on the actual time served by the prisoner, not based on the sentence imposed. (Federal Bureau of Prisons, Kentucky)

U.S. Appeals Court
GOOD TIME CREDIT

Sample v. Morrison, 406 F.3d 310 (5th Cir. 2005). A federal prisoner filed a habeas corpus petition asserting that the Bureau of Prisons (BOP) was calculating his good time credit in a manner that was contrary to the federal prisoner release statute. The district court denied relief and the prisoner appealed. The appeals court dismissed for lack of subject matter jurisdiction. The appeals court held that the petition was not ripe for judicial review and that in any event, the BOP’s interpretation of the statute was entitled to *Chevron* deference. The court held that the phrase “term of imprisonment” in the statute that permitted a federal prisoner to earn up to 54 days of good time credit at the end of each year of the prisoner’s term of imprisonment was ambiguous, in that it could mean either the sentence imposed or the actual time served in prison. The court accorded deference to the BOP interpretation, which awarded credit for each year served in prison. (Federal Bureau of Prisons, Texas)

U.S. Appeals Court
GOOD TIME

Sash v. Zenk, 428 F.3d 132 (2nd Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus challenging the manner in which the Bureau of Prisoners calculated his good time credit. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed, finding that the Bureau reasonably interpreted the statute by awarding good time based on the actual time served by the prisoner, not based on the sentence imposed. (Federal Bureau of Prisons, New York)

U.S. Appeals Court
DUE PROCESS
REVOCATION

Wilson v. Jones, 430 F.3d 1113 (10th Cir. 2005). A state inmate petitioned for a writ of habeas corpus, challenging on due process grounds a misconduct conviction that caused him to be demoted to a non-credit-earning prisoner. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, ordering the issuance of a writ on remand. The court held that the misconduct conviction reduced the inmate’s credit-earning class in a manner that inevitably affected the direction of his sentence and therefore deprived the inmate of a liberty interest. According to the court, officials violated the inmate’s due process rights by

convicting him without any evidence. (Great Plains Correctional Facility, Oklahoma)

U.S. Appeals Court
GOOD TIME CREDIT

Yi v. Federal Bureau of Prisons, 412 F.3d 526 (4th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus, contending that he was entitled to more good time credit (GTC) than awarded by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the phrase “term of imprisonment” in the statute was ambiguous and that the court would defer to the BOP’s statutory interpretation. (Federal Correctional Institution, Petersburg, Virginia)

2006

U.S. District Court
LIBERTY INTEREST

Gaskins v. Johnson, 443 F.Supp.2d 800 (E.D.Va. 2006). A state inmate, proceeding pro se, filed a petition for a writ of habeas corpus challenging the denial of good conduct credits. The district court dismissed the petition. The court held that the appropriate remedy for the inmate’s challenge to the denial of good conduct credits was an action pursuant to § 1983, not a petition for a writ of habeas corpus. The court found that the inmate did not have a protected liberty interest in either maintaining a current classification or obtaining a new classification, as required to prevail on a § 1983 claim. (Powhatan Correctional Center, Virginia)

U.S. District Court
GOOD TIME CREDITS

Gray v. Johnson, 436 F.Supp.2d 795 (W.D.Va. 2006). A prisoner brought a § 1983 action against prison officials claiming that he was compelled to participate in a residential substance abuse program that allegedly contained religious elements, in violation of the Establishment Clause of First Amendment. The Therapeutic Community Program (TCP) was operated for inmates with a history of substance abuse who have twelve to eighteen months left to serve. Those who qualify for the TCP either have to participate or forfeit the right to accrue good conduct time. Members of the TCP live together in a dorm and they are required to actively participate, and to encourage other members to do the same. If an inmate fails to participate satisfactorily, he loses his good conduct time, and prison officials may transfer him to a dorm with other inmates who either refuse to participate or who have refused to cooperate once in the program. The TCP offers therapeutic group meetings, educational seminars, group talent shows, and Alcoholics Anonymous (AA) and Narcotics Anonymous meetings (NA). The program consists of five “phases,” each of which requires the completion of a variety of tasks, ranging from demonstrating certain behavioral modifications to completing a written test. The goal of each participant is to “phase out” of the program by completing the requisite activities for each phase. To that end, participants have at their disposal a library of self-help materials.

The district court entered judgment in favor of the defendants. The court held that prison officials had an objectively reasonable belief that the prisoner’s participation in the residential substance abuse program did not violate his rights, and therefore were entitled to qualified immunity in prisoner’s § 1983 action claiming that he was compelled to participate in the program in violation of the Establishment Clause of the First Amendment. Prison officials had previously taken actions in order to bring the program into compliance with Establishment Clause, including making Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) participation optional, removing any religious references from inspirational readings, separating religious library materials from secular ones, making the use of any religious library materials completely optional, and enacting a rule prohibiting participants from proselytizing but allowing them to discuss the role of religion in their personal recovery. According to the court, these steps created an objectively reasonable belief that the program complied with Establishment Clause.

The court held that the program did not have a non-secular legislative purpose in violation of the Establishment Clause of the First Amendment, where the program’s dominant purpose was rehabilitation of inmates with a history of substance abuse, and prison officials demonstrated that rehabilitation was the true goal of program, not a sham secular purpose.

According to the court, the program did not have the primary effect of advancing or inhibiting religion in violation of the Establishment Clause, where a reasonable observer would not construe religious activities which took place in program, including a single historical discussion of the Essene community, the performance of a single gospel song at a talent show, the availability of non-mandatory Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings, and the availability of spiritual materials in the community library, as advancement of religion by the state, since all activities involved free expression of other participants in program.

The court found that the program did not impermissibly entangle religion and government in violation of the Establishment Clause, where staff members were required to intervene to prevent proselytizing when individuals expressed their faith during the program. (Therapeutic Community Program, Botetourt Correctional Center, Virginia)

U.S. Appeals Court
REVOCATION
DUE PROCESS

Johnson v. Finnan, 467 F.3d 693 (7th Cir. 2006). A state prison inmate sought federal habeas relief after a prison disciplinary board had imposed discipline, consisting of revocation of 30 days’ good-time credit, for a lockdown infraction. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, finding that the district court should have held an evidentiary hearing, given the inmate’s sworn testimony and extrinsic evidence that contradicted the disciplinary board’s version of events. The inmate had asserted that he had

unsuccessfully sought a continuance before the prison disciplinary board in order to obtain additional evidence, including a surveillance videotape, that would contradict the accuser's version of events. The court noted that a prison disciplinary board is entitled to resolve conflicts in the stories presented to it, in deciding to impose revocation of good-time credits as discipline, as long as some evidence supports the decision; however, the board is not entitled to prevent an inmate from offering material evidence. (Indiana Department of Corrections)

U.S. Appeals Court
DUE PROCESS

Louis v. Department of Correctional Services of Nebraska, 437 F.3d 697 (8th Cir. 2006). Inmates and former inmates brought an action against a state corrections department and various department officials alleging that the method of collecting and testing urine samples for drug use violated their constitutional right to procedural due process. The district court entered judgment in favor of defendants and the inmates appealed. The appeals court found that due process in connection with testing of the inmates' urine for drugs did not require that the inmates sign and seal the specimens after collection, absent evidence that the collection protocols requiring that the collector label and seal the specimens resulted in erroneous deprivations of inmates' good-time credits. According to the court, even if collection procedures did not eliminate all possibility of mislabeled samples, they conformed to the practices used in private-sector workplace drug testing, and were adequate to ensure reasonably reliable results. The court concluded that the refusal of the corrections department to fund confirmatory drug testing of a prisoner's urine sample after initial testing yielded a positive result, when the prisoner denied using illicit drugs, did not violate a prisoner's due process rights. The court noted that the initial testing was 95 percent accurate and that a prisoner had the opportunity to obtain confirmatory testing at an independent laboratory at his own expense. The appeals court upheld the refusal of the corrections department to allow inmates to call lab technicians as witnesses at disciplinary hearings to testify about procedures used for drug testing of inmates' urine samples, finding that this practice did not violate a prisoner's due process rights. The court noted that inmates could present urinalysis laboratory reports prepared by the lab technicians, and the exclusion of technicians' testimony was justified by the department's need to manage the environment of the prison and maximize the productivity of lab technicians. (Nebraska State Penitentiary)

U.S. District Court
DUE PROCESS

Scruggs v. Jordon, 435 F.Supp.2d 869 (N.D.Ind. 2006). A state prisoner sought federal habeas relief after he lost 120 days of good time credit as a sanction at a prison disciplinary proceeding. The district court denied the petition. The court held that prison officials did not violate due process in the prison disciplinary proceeding when they amended the original violation, and that due process did not require disqualification of the chairman of the state prison disciplinary board because the chairman was not directly involved in the investigation of the charges against the prisoner. According to the court, the board's refusal to allow the prisoner to present his walking cane as evidence did not violate due process, where the prisoner had not made a request to present physical evidence at the disciplinary hearing, and was allowed to present his version of the incident. The court also noted that due process did not require live testimony of corrections officers at a prison disciplinary hearing, absent a showing by the prisoner that their testimony would have been any different if given live, or that he was prejudiced by the absence of live testimony. (Westville Correctional Facility, Indiana)

2007

U.S. District Court
DUE PROCESS
GOOD TIME CREDIT

Bonet v. Khahaifa, 512 F.Supp.2d 141 (W.D.N.Y. 2007). A state inmate brought a § 1983 action against prison officials alleging denial of due process in connection with a disciplinary hearing that resulted in confinement in a special housing unit (SHU) and loss of good-time credits. The district court granted the defendants' motion for summary judgment. The court held that the inmate's 180-day confinement in the special housing unit (SHU) did not violate the inmate's procedural due process rights because it did not impose an atypical and significant hardship on the inmate, as required to establish interference with a due process liberty interest. (Attica Correctional Facility and Southport Correctional Facility, New York)

U.S. District Court
GOOD-TIME CREDIT
EQUAL
PROTECTION

Jackson v. Russo, 495 F.Supp.2d 225 (D.Mass. 2007). A prisoner brought a suit against prison officials claiming that compensation and good time credits awarded to him for participation in a barber program violated his due process and equal protection rights. The prisoner moved for summary judgment, and the defendants moved to dismiss for failure to state a claim. The district court granted the motions in part and denied in part as moot. The court held that the prisoner had no constitutionally created right to conduct business while incarcerated or to receive payment by the prison for services he provided to other inmates as part of a barber vocational program. The court held that the corrections commissioner's refusal to award additional good time credits to the inmate who enrolled in the barber school, beyond awards granted in 2.5 day increments for participation in various programs, did not create an atypical prison hardship, so as to give rise to an interest protected by due process. The court noted that the prisoner was not unfairly denied the opportunity to participate in other prison activities that might have earned him more credits. According to the court, the prisoner had no constitutional, statutory, or regulatory right to good time credits. (Souza Baranowski Correctional Center, Massachusetts)

U.S. District Court
DUE PROCESS

Moreno v. Buss, 523 F.Supp.2d 878 (N.D.Ind. 2007). After exhausting administrative remedies, a state prisoner submitted a petition for a writ of habeas corpus pertaining to demotion in his credit time earning classification at a prison disciplinary hearing. The court held that the prisoner had a procedural due process right, consistent with security considerations, to present a sweatshirt as exculpatory evidence for the Disciplinary Hearing Board's (DHB) consideration and that the DHB's review of investigative files containing photographs of the sweatshirt was not sufficient to satisfy the prisoner's due process rights because review of photographs would not have allowed the DHB to determine the nature of the stains on the sweatshirt, which was the point at issue. The inmate alleged that the sweatshirt was stained with paint, not blood. The court found that the DHB's error in failing to allow the prisoner to present the sweatshirt as exculpatory evidence was harmful, and that there was no evidence to support the DHB's finding that the prisoner was guilty of battery. The court noted that it was not necessary for the sweatshirt to be physically present at the hearing, so long as the DHB examined it before making a decision. (Indiana State Prison)

U.S. Appeals Court
EX POST FACTO

Serrato v. Clark, 486 F.3d 560 (9th Cir. 2007). An inmate petitioned for a writ of habeas corpus and the district court denied the petition. The inmate appealed and the appeals court affirmed. The court held that the inmate suffered an injury in fact, as required for the inmate to have standing to bring a habeas petition challenging the decision of the Bureau of Prisons (BOP) to terminate his boot camp program, even though placement in boot camp was a discretionary decision made on an individual basis. The court noted that the decision denied the inmate the ability to be considered for a program that would have allowed her to serve only six months in prison. The court found that the decision of the BOP to terminate the boot camp program was committed to agency discretion by law, and thus was not susceptible to judicial review under the Administrative Procedure Act (APA). The inmate had only the recommendation by the judge that her eligibility for the discretionary program be evaluated and she had not earned any early release privileges when informed of the termination. (Federal Correctional Institution Dublin, California)

2008

U.S. Appeals Court
REVOCAATION

Barrett v. Belleque, 544 F.3d 1060 (9th Cir. 2008). A prisoner brought a pro se § 1983 action alleging that prison officials violated his rights under the First and Fourteenth Amendments by punishing him for writing letters using vulgar and offensive racist language to describe prison officials. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's allegations that the prison censored his outgoing mail and punished him for its contents stated a § 1983 claim that his First Amendment rights were violated. The prisoner had attempted to mail a series of letters to his grandmother and mother. The letters used vulgar and offensive racist language to describe prison officials. After reviewing the letters, prison officials cited the prisoner for violation of various prison disciplinary rules, resulting in a loss of good time, revocation of certain privileges, and other punitive measures. The appeals court found that the district court's dismissal relied on an incorrect legal standard. (Oregon State Penitentiary)

U.S. Appeals Court
DUE PROCESS
REMOVAL

Davis v. Silva, 511 F.3d 1005 (9th Cir. 2008). A state prisoner brought a habeas petition challenging a prison disciplinary proceeding in which he was assessed a 150-day forfeiture of good-time credit. The district court dismissed the petition for failure to exhaust and the prisoner appealed. The appeals court reversed, finding that the prisoner provided the state court with sufficient facts to exhaust his state court remedies. The court noted that exhaustion under the Antiterrorism and Effective Death Penalty Act (AEDPA) requires that a habeas petitioner fairly present his federal claims to the highest state court available and the petitioner describes in the state proceedings both the operative facts and the federal legal theory on which his claim is based so that the state courts have a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. The court noted that exhaustion of state remedies under AEDPA does not require that a habeas petitioner present to the state courts every piece of evidence supporting his federal claims. According to the court the state prisoner's state habeas petition provided the state court with sufficient facts to address his claim that his due process right to call witnesses in a disciplinary proceeding was violated. The petition explicitly stated that the prisoner was denied his due process rights to a witness and made clear based on statute citations that the prisoner was charged with committing a battery upon someone who was not an inmate. The prisoner cited a statute governing denial and revocation of good-time credits, referred to a case holding that due process demands that an inmate be allowed to call witnesses in his defense in a disciplinary proceeding involving possible loss of good-time credits, and cited a regulation controlling disciplinary proceedings. (California Department of Corrections and Rehabilitation)

U.S. District Court
REVOCAATION

Gauthier v. Dexter, 573 F.Supp.2d 1282 (C.D.Cal. 2008). A state prisoner filed a petition for habeas corpus challenging discipline imposed for trafficking in narcotics on prison grounds. The district court denied the petition, finding that the prisoner was given sufficient notice of the charges alleged against him, the officer at the prisoner's disciplinary hearing was impartial, and the prisoner's conviction was sufficiently supported by the informant's confidential statements. The court noted that prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of constitutional rights due to a defendant in such proceedings does not apply. The prison disciplinary committee determined that the prisoner distributed heroin from his cell window to other prisoners who sold it in the prison yard, supporting a drug trafficking violation and subsequent revocation of work credits. The court found that even though the determination was primarily based on statements from confidential informants, the informants had previously given reliable information, the information supporting the prisoner's violation was independently corroborated, and the informants incriminated themselves through their statements. (California Men's Colony East)

U.S. District Court
DUE PROCESS
EQUAL
PROTECTION

Kogut v. Ashe, 592 F.Supp.2d 204 (D.Mass. 2008). A county jail inmate petitioned for a writ of habeas corpus, alleging he was prevented from participating in various jail work programs as a result of discrimination based on his disability. The district court granted petition. The court held that the allegation that the inmate was prevented from participating in a good-time work program that would have affected the duration of his confinement as a result of discrimination in violation of the Americans with Disabilities Act (ADA) was sufficient to form the basis of habeas relief. The court noted that while an inmate may have no right under the Constitution to credit for good-time, he may not under Title II of the Americans with Disabilities Act (ADA) be barred, based on discrimination arising from his disability, from work programs that may have the effect of reducing his sentence. He alleged that he suffers from disabilities which affect his ability to perform certain types of work assigned in the jail. The inmate alleged that he was "denied any and/or all access" to work assigned through the "County Correctional Facilities Work Programs" and provided 16 inmate work request forms in support of this claim. (Worcester County Jail, Massachusetts)

U.S. Appeals Court
GOOD-TIME CREDIT
REVOCAATION

Simpson v. Thomas, 528 F.3d 685 (9th Cir. 2008). A state inmate brought a § 1983 action against a corrections officer, alleging use of excessive force after the inmate failed to comply with the officer's orders. A jury trial resulted in a verdict in the officer's favor, and the district court denied the inmate's motion for a new trial. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate was not precluded from testifying that the officer started the physical altercation by punching him, and that his subsequent actions were done in self-defense,

even if such testimony was contrary to the result of a prison disciplinary proceeding in which the inmate was found guilty of battery on the officer and assessed 150 days of behavioral credit forfeiture. (Cal. Medical Facility, Vacaville)

U.S. Appeals Court
GOOD-TIME CREDIT

Tablada v. Thomas, 533 F.3d 800 (9th Cir. 2008). A federal inmate sought a writ of habeas corpus, challenging the Bureau of Prisons' (BOP) calculation of good time credits in determining the length of time left to serve on his 20-year sentence. The district court denied the petition and the inmate appealed. The appeals court affirmed. The court held that the BOP's program statement, calculating good time credits based on the time served rather than the sentence imposed, reasonably interpreted the good time credit statute, despite the invalidity of a regulation with an identical methodology. According to the court, the inmate's good time credits were required to be calculated based on time served rather than on the sentence imposed. (Federal Correctional Institute, Sheridan, Oregon)

2009

U.S. Appeals Court
DUE PROCESS
GOOD TIME CREDIT
LIBERTY INTEREST

Carver v. Lehman, 558 F.3d 869 (9th Cir. 2009). A former inmate of the Washington Department of Corrections (DOC), who had been sentenced to a term of imprisonment plus a term of community custody based on his status as a sex offender, brought a § 1983 action against the secretary of the DOC. The former inmate alleged that denial of his application for early release into community custody constituted a violation of his due process rights. The district court granted summary judgment for the DOC secretary, and the former inmate appealed. The appeals court affirmed. The court held that state statutes did not create a liberty interest in early release into community custody for sex offenders who earned a good-time early release date. Rather, according to the court, the statutes only made such offenders eligible for discretionary transfer at an earlier date, if appropriate. (Washington State Department of Corrections)

U.S. Appeals Court
EX POST FACTO
GOOD-TIME CREDIT

Dahl v. Weber, 580 F.3d 730 (8th Cir. 2009). A former state prisoner filed § 1983 action against the Secretary of the South Dakota Department of Corrections (DOC) and two wardens, seeking money damages for unconstitutionally prolonged incarceration based on violation of the Ex Post Facto Clause by the DOC's retroactive withholding of the prisoner's mandatory good-time credits pursuant to a statute enacted after his sex offense was committed. The district court granted the secretary and one warden qualified immunity, but denied the other warden qualified immunity. The warden appealed. The appeals court reversed in part and remanded. The court held that although the prison warden accepted service of the state prisoner's habeas petition challenging the Department's withholding of good-time credits, the warden was entitled to qualified immunity from the prisoner's § 1983 claims for money damages for unconstitutionally prolonged incarceration. According to the court, at the time the warden accepted service he had no duty to review the prisoner's status to determine that he was entitled to be released, and the warden lacked unilateral authority to restore good-time credits and release the prisoner. (South Dakota Department of Corrections)

U.S. District Court
GOOD TIME CREDIT

Kogut v. Ashe, 602 F.Supp.2d 251 (D.Mass. 2009). A state prisoner filed a petition for a writ of habeas corpus, alleging that he had been discriminatorily excluded from work programs in which he could have earned good-time credits, in violation of the Americans with Disabilities Act (ADA). The district court dismissed the petition, finding that the prisoner's alleged disabilities were not the reason for his exclusion from the work programs, as would violate the ADA. The prisoner was excluded from the work programs because he had been the subject of over 30 incident reports for harassment of staff, fights with other inmates, and other disciplinary infractions, and several of those incidents required the prisoner's segregation from general prison population. The court noted that disciplinary issues and concerns over prison security may be legitimate non-discriminatory grounds for limiting access to a jail program. (Worcester County Jail, Massachusetts)

U.S. District Court
DUE PROCESS
REVOCATION

Lorando v. Waldren, 629 F.Supp.2d 60 (D.D.C. 2009). A parolee filed a petition for habeas corpus challenging the loss of good time credits due to a parole violation. The district court denied the petition. The court held that the parolee's rights were not violated when he was not afforded a probable cause hearing before the United States Parole Commission (USPC) within five days after he was taken into custody pursuant to a parole violation warrant. According to the court, the parolee suffered no prejudice from the delay, and to the extent that he sought release from custody due to the delay, his request was mooted by his re-parole. The court found that even if the United States Parole Commission (USPC) had incorrectly determined that the parolee had five, not four, prior convictions in revoking parole, the parolee was not prejudiced by determination, since the salient factor score would have been identical because four or more prior convictions were accorded the same weight. (Dist. of Columbia Central Det. Facility, U.S. Parole Commission)

U.S. Appeals Court
DUE PROCESS
REVOCATION

Morgan v. Quarterman, 570 F.3d 663 (5th Cir. 2009). A petitioner filed a habeas petition challenging a disciplinary proceeding that resulted in loss of good time credit due to his use of indecent or vulgar language in a note he mailed to opposing counsel in an unrelated habeas proceeding. The district court granted summary judgment for the government and the petitioner appealed. The appeals court affirmed. The appeals court held that the state prison had a legitimate penological interest in rehabilitation that justified its revocation of 15 days of the prisoner's good time credit as punishment for violating a disciplinary rule prohibiting the use of indecent or vulgar language when the prisoner mailed to a state's attorney in habeas proceeding a note written on toilet paper stating, "Please use this to wipe your ass, that argument was a bunch of shit." According to the court, the punishment was not an impermissible infringement of the prisoner's First Amendment right to free speech. The court noted that the prisoner's note demonstrated a completely unjustified disrespect for authority, expressed in the most unacceptably vulgar form, which would be offensive in mainstream society, and the prison's disciplinary action served to correct behavior that would seriously prejudice the prisoner when he returns to the civil world. The court found that requirements of due process were satisfied at the prisoner's hearing where the prisoner: received notice of the disciplinary hearing and his attendant rights; he was provided assistance of a counsel substitute; the prisoner called the charging officer as a witness and that officer testified via speaker phone; the hearing officer's denial of the prisoner's request that the prison's mail room supervisor and Assistant Attorney General be called as witnesses was warranted since the prisoner's note was not intercepted; and that the charging officer's report and testimony, the prisoner's admission that the note was in his handwriting, and

prison mail logs all supported the finding against him. (Texas Department of Criminal Justice, Correctional Institutions Division, Stevenson Unit)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
REMOVAL

Ramsey v. Goord, 661 F.Supp.2d 370 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging due process violations in connection with a disciplinary hearing and violations of his constitutional rights relative to his temporary removal from a kosher cold alternative diet (CAD) program. The employees moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether a state prison correction officers' captain, correction officer, and/or prison counselor were personally involved in the temporary removal of the Jewish prisoner from a kosher cold alternative diet (CAD) program. The court found that the prisoner, who was found guilty by a prison disciplinary hearing officer of violating New York Department of Correctional Services (DOCS) rules, had a protected liberty interest in his earned good time credit toward release, and thus an officer was required to provide the prisoner with procedural due process before imposing on the prisoner a penalty that included loss of six months of good time credit. The court held that a hearing officer's failure to call unidentified inmates to testify at the prisoner's disciplinary hearing did not violate the prisoner's procedural due process rights, where the prisoner did not make any request during a hearing for such witnesses to testify, and the prisoner failed to explain the relevancy of unidentified inmates' testimony. (Southport Corr'l Facility, N.Y.)

2010

U.S. District Court
GOOD-TIME CREDIT

Hill v. Cowin, 717 F.Supp.2d 268 (N.D.N.Y. 2010). A prisoner filed a § 2241 habeas petition alleging he was being unlawfully held in prison beyond his release date because the Bureau of Prisons (BOP) improperly calculated his Good Conduct Time (GCT). The district court granted the petition, finding that the BOP improperly calculated the prisoner's GCT, resulting in his being held beyond his release date. (Federal Bureau of Prisons)

U.S. Appeals Court
GOOD-TIME CREDIT

Izzo v. Wiley, 620 F.3d 1257 (10th Cir. 2010). A federal inmate petitioned for a writ of habeas corpus, challenging a decision of the Bureau of Prisons (BOP) denying his eligibility for the Elderly Offender Home Detention Pilot Program. The district court denied the petition and the inmate appealed. The appeals court affirmed. The court held that the provision of the Second Chance Act (SCA) making an offender eligible for the Elderly Offender Home Detention Pilot Program if he is at least 65 years old and has served 75% of the term of imprisonment to which he was sentenced refers to the term imposed by the sentencing court, without any consideration of good time credit. (Federal Bureau of Prisons, Colorado)

2011

U.S. District Court
DUE PROCESS
EX POST FACTO

Baggett v. Keller, 796 F.Supp.2d 718 (E.D.N.C. 2011.) State prisoners, who were each convicted of first-degree murder and sentenced to life imprisonment, petitioned for federal habeas relief on the ground that their accrued good time, gain time, and merit time credits entitled them to unconditional release. The district court dismissed the petitions. The court held that the decision to withhold application of credits from the calculation of the date for unconditional release did not violate the prisoners' due process rights. The court noted that the credits were solely for the purpose of allowing prisoners serving life sentences to move to less restrictive custody grades, not for allowing unconditional release. The court held that the decision did not violate the Ex Post Facto Clause, where the DOC never promulgated a regulation under state law shortening or modifying prisoner's sentences and never applied sentence reduction credits toward calculating the date of their unconditional release. (North Carolina Department of Corrections)

U.S. District Court
DUE PROCESS
GOOD-TIME CREDIT

Bonadonna v. Grondolsky, 762 F.Supp.2d 311 (D.Mass. 2011). A federal inmate filed a habeas petition challenging the Federal Bureau of Prisons' (BOP) determination that he was ineligible to participate in the Elderly Offender Home Detention Pilot Program. The district court dismissed the action. The court held that good time credit could not be considered in determining whether the inmate was eligible for home detention by satisfying the requirement that he serve 75% of his "term of imprisonment." The court also held that due process did not require that the inmate receive a hearing prior to denial of his request. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
GOOD-TIME CREDIT

Morton v. Bolyard, 810 F.Supp.2d 112 (D.D.C. 2011.) A federal prisoner, who was employed by the Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody, brought a Bivens action against various federal officials, alleging that the defendants denied him promotions and back pay for his UNICOR job, and denied him good time credit for vocational training received through UNICOR and educational training he took at his own expense through a correspondence course. The defendants moved to dismiss. The district court granted the motion. The court held that sovereign immunity barred the prisoner's claims against the officials in their official capacities and that the district court lacked personal jurisdiction over the officials in their individual capacities. The court found that the prisoner failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), even though the prisoner had filed an administrative remedy request at the institutional level, where the prisoner had failed to file an administrative remedy request at the regional and central office levels, and the regional and central office levels had the authority to provide relief or to take action in response to the complaint. (United States Penitentiary Hazelton, West Virginia, Federal Prison Industries)

U.S. District Court
GOOD-TIME CREDIT

Reyes-Morales v. Wells, 766 F.Supp.2d 1349 (S.D.Ga. 2011). An alien federal prisoner petitioned for habeas relief, challenging the Federal Bureau of Prisons' (BOP) decision to reduce good conduct time (GCT) applied to his sentence after he withdrew from a literacy program required by the Prison Litigation Reform Act (PLRA). The district court denied the petition. The court held that the prisoner was not subject to a final order of removal, deportation, or exclusion, as required to receive the 54-day per year Good Conduct Time award, despite nonparticipation in a literacy program. According to the court, the BOP's regulations and program statements concerning loss of GCT time due to nonparticipation in a literacy program were a reasonable interpretation of PLRA. The court found that the reduction of GCT did not violate the prisoner's procedural due process rights. (McRae Correctional Facility, Georgia)

2012

- U.S. Appeals Court
GOOD-TIME CREDIT
- Cardona v. Bledsoe*, 681 F.3d 533 (3rd Cir. 2012). A federal inmate petitioned for habeas relief arguing that the federal Bureau of Prisons (BOP) illegally referred him to the Special Management Unit (SMU) of a penitentiary in which he was currently placed, as punishment for filing numerous lawsuits against the BOP. The district court dismissed the action. The prisoner appealed. The appeals court affirmed. The court held that the inmate's petition for habeas relief did not concern the execution of his sentence, and thus the district court did not have subject-matter jurisdiction over it, since the inmate did not allege that the BOP's conduct was somehow inconsistent with the command or recommendation in the sentencing judgment; even if the inmate's placement in SMU made him eligible to lose good time credits, he might not end up losing any. (United States Penitentiary, Lewisburg, Pennsylvania)
- U.S. District Court
RESTORATION
- Mitts v. Zickefoose*, 869 F.Supp.2d 568 (D.N.J. 2012). A federal prisoner filed a petition for a writ of habeas corpus, challenging his loss of good conduct time (GCT) credit following a finding that he was guilty of committing the disciplinary infraction of fighting. The prisoner's claims were screened and his claims relating to his transfer and loss of privileges were dismissed. The district court held that the prisoner was denied a meaningful opportunity to call witnesses at his disciplinary hearing, warranting federal habeas relief directing the Bureau of Prisons (BOP) to provide him with a curative hearing, where the prisoner, having been placed in solitary confinement, without assistance of a staff representative, was unable to either detect the identities of inmate witnesses or to determine whether another inmate involved in the altercation confessed to him being merely the victim of that inmate's violence. (FCI Fort Dix and United States Penitentiary Hazelton, West Virginia)
- U.S. District Court
GOOD-TIME CREDIT
- Rogers v. District of Columbia*, 880 F.Supp.2d 163 (D.D.C. 2012). A former prisoner brought an action against the District of Columbia, alleging he was over-detained and asserting claims for negligent training and supervision. The district moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to when the prisoner was to be released. The district court began its opinion as follows: "Our saga begins with the tale of plaintiff's numerous arrests. Plaintiff was arrested on four different charges in 2007: two felony charges for violating the Bail Reform Act, one felony charge for Possession with Intent to Distribute a Controlled Substance and one misdemeanor charge for carrying an open can of alcohol without a permit." During the prisoner's time in jail he was sentenced for all of the remaining charges. The prisoner claimed he was over-detained by approximately two months, and that this was the direct result of the D.C. Jail's negligent training and supervision of its employees with regard to calculating jail credits. (District of Columbia Jail)
- U.S. District Court
GOOD-TIME CREDIT
- Smith v. Reyes*, 904 F.Supp.2d 1070 (S.D.Cal. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against prison employees, alleging excessive force, failure to protect, failure to supervise, and filing a false misbehavior report in violation of the Eighth Amendment. The district court granted the defendants motion to dismiss. The court held that the prisoner's § 1983 claims against prison employees in their official capacities, alleging violations of the Eighth Amendment, were precluded by Eleventh Amendment sovereign immunity. The court found that the prisoner's allegations that a prison employee assaulted him and that other employees failed to report the alleged misconduct implied the invalidity of an administrative report resulting in the loss of good-time credits, was precluded because the prisoner's conviction had not been reversed, expunged, declared invalid, or called into question. (Calipatria State Prison, California)
- U.S. Appeals Court
GOOD-TIME CREDIT
- Sudler v. City of New York*, 689 F.3d 159 (2nd Cir. 2012). Inmates of state and city prison systems brought an action against corrections defendants, alleging violations of their due process rights when they were imprisoned for periods of time longer than their judicially imposed sentences. The district court dismissed the claims against some defendants, and granted summary judgment as to the remaining defendants. The prisoners appealed. The appeals court affirmed, finding that state prison officials were entitled to qualified immunity on the inmates' claim that their procedural due process rights were violated when officials failed to promptly afford them Parole Jail Time credits for the time served in local custody on sentences ordered to run concurrently with undischarged parole revocation sentences. (N.Y. State and New York City prison systems)
- U.S. Appeals Court
DUE PROCESS
EX POST FACTO
LIBERTY INTEREST
- Waddell v. Department of Correction*, 680 F.3d 384 (4th Cir. 2012). A district court dismissed a prisoner's habeas petition as time-barred, and, in the alternative, denied the petition on its merits, and the petitioner appealed. The appeals court affirmed. The appeals court held that the state corrections department's practice of applying earned good time credits for certain identified purposes, but not for the purpose of reducing a prisoner's life sentence did not give rise to a due process protected liberty interest in a life sentence reduced by good time credits. The court also held that the corrections department's failure to utilize the prisoner's good time credits to reduce his life sentence under the eighty-year rule did not give rise to an ex post facto claim. (North Carolina Department of Correction)

2013

- U.S. Appeals Court
DUE PROCESS
GOOD-TIME CREDIT
- Denny v. Schultz*, 708 F.3d 140 (3rd Cir. 2013). A federal prisoner petitioned for a writ of habeas corpus challenging findings made by Disciplinary Hearing Officer (DHO) that he had possessed weapons in violation of a prison regulation and sanctioned him with forfeiture of 40 days of good time credit and the imposition of 60 days in disciplinary segregation. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that the DHO did not violate the federal prisoner's due process rights when it found that the prisoner had committed the prohibited act of "Possession of a Weapon," on the basis that two homemade shanks had been found in a cell that he shared with another prisoner. The court noted that, although those weapons may have belonged to his cellmate, all prisoners had an affirmative responsibility to keep their "area" free from contraband and the collective responsibility theory applied. According to the court, a prisoner serving a term of

imprisonment of more than one year had a liberty interest in good time credit that was protected by Fourteenth Amendment, since he had statutory right to receive credit toward his sentence for good conduct. But the court noted that on a claim of loss of good time credits through a disciplinary action, though the “some evidence” standard is a standard of appellate review and not a “burden of proof,” a reviewing court need only find that a decision by a Disciplinary Hearing Officer (DHO) had “some basis in fact” in order to affirm the decision as comporting with the Due Process Clause. (Federal Correctional Institution, Fairton, New Jersey)

U.S. Appeals Court
GOOD-TIME CREDIT
REVOCATION

Grandberry v. Keever, 735 F.3d 616 (7th Cir. 2013). A state prisoner petitioned for federal habeas relief, challenging a prison disciplinary action resulting in the loss of his “good-time” credit that would extend his period of incarceration by 30 days. The district court denied the petition and the prisoner appealed. The appeals court held that the prisoner was not required to seek a certificate of appealability (COA) before appealing the denial of his petition for habeas relief. The court allowed the appeal to go forward. (Plainfield Correctional Facility, Indiana)

2014

U.S. District Court
REVOCATION

Brooks v. Prack, 77 F.Supp.3d 301 (W.D.N.Y. 2014). A state inmate brought a § 1983 action against prison officials, alleging due process violations in connection with the rehearing of a misbehavior report. The officials moved to dismiss for failure to state a claim, or in the alternative, for summary judgment. The district court denied the motion. The court held that summary judgment would be premature and that the penalty imposed on the inmate implicated a property interest protected by due process. The court also found that the inmate stated procedural due process claims that he was denied adequate assistance and that he was denied the opportunity to present evidence. A penalty of 20 months in a special housing unit (SHU), loss of privileges, and loss of 20 months of recommended good time had been imposed on the inmate who was found guilty in a disciplinary rehearing of assault on staff, refusal of a direct order, and insolent language. The inmate alleged that he met with and was interviewed by his inmate assistant, that he gave the assistant a list of materials he wanted in preparation for his disciplinary rehearing, but the assistant did not give him certain requested materials, including a list of inmates in a certain block, a list of porters, photographs, and command logs. The inmate also alleged that the assistant did not give him answers to questions he proposed to ask potential witnesses and failed to provide him with witness refusal forms. According to the court, the inmate’s allegations that the hearing officer recommenced a disciplinary hearing outside of the inmate’s presence and stated on the record that he provided the inmate with certain materials, which the inmate claimed he never received, stated a § 1983 procedural due process claim related to the inmate’s exclusion from a portion of the rehearing. (Southport Correctional Facility, New York)

U.S. Appeals Court
REVOCATION

Grandberry v. Smith, 754 F.3d 425 (7th Cir. 2014). A state prisoner filed a petition for a writ of habeas corpus, challenging the revocation of 30 days of his good-time credits upon his conviction of an administrative offense of possession of an electronic device. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions. The court held that the revocation of the prisoner’s good-time credits was not supported by some evidence, where there was no evidence that the prisoner used a computer to download forms and documents that he was not told to by a prison employee. (Putnamville Correctional Facility, Indiana)

2015

U.S. Appeals Court
REVOCATION
DUE PROCESS

Austin v. Pazera, 779 F.3d 437 (7th Cir. 2015). A state prisoner petitioned for federal habeas relief, alleging that a disciplinary proceeding had denied him due process of law, primarily by convicting him on the basis of insufficient evidence. The district court denied the petition and the prisoner appealed. The appeals court reversed, finding that evidence did not support the disciplinary determination that the inmate was guilty of attempted trafficking in tobacco. According to the court, the prison disciplinary hearing officer’s finding that the inmate was guilty was not supported by even “some evidence,” and, thus, the subsequent revocation of his good time credit and other imposed disciplinary sanctions violated due process. The inmate’s punishment consisted of losing 60 days of good-time credit which increased his period of imprisonment by 60 days, being demoted from “credit class 1” to “credit class 2.” Inmates in the first class earn one day of good time credit for each day of imprisonment, while inmates in the second class earn one day of credit for every two days of imprisonment. The inmate was also given 20 hours of extra work duty, and denied access to the prison commissary for 25 days. (Indiana Department of Corrections)

U.S. Appeals Court
GOOD TIME

Frank v. Schultz, 808 F.3d 762 (9th Cir. 2015). A federal inmate brought a Bivens action against prison officials, alleging that he was denied due process in connection with a prison disciplinary hearing. The district court granted the officials’ motion for summary judgment and the inmate appealed. The appeals court affirmed, finding that the inmate’s due process rights were not violated in connection with the disciplinary hearing. According to the court, any procedural error arising from the disciplinary hearing officer’s modification of the charge against the inmate, without providing the inmate advance written notice of the modification, was corrected through the administrative appeal process, and the inmate ultimately did not lose any good time credits, and thus the inmate’s due process rights were not violated in connection with the disciplinary hearing. (Victorville Med. II, California)

U.S. Appeals Court
GOOD TIME
EX POST FACTO

Hinojosa v. Davey, 803 F.3d 412 (9th Cir. 2015). A state prisoner petitioned for federal habeas relief, challenging a state statutory amendment modifying the credit-earning status of prison-gang members and associates in segregated housing, so that such prisoners could no longer earn any good-time credits that would reduce their sentences. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions to the district court. The court held that the amendment disadvantaged the offenders it affected by increasing the punishment for their crimes, an element for an ex post facto violation. The court noted that even if a prisoner could easily opt out of his prison gang, a prisoner who continued doing what he was doing before the statute was amended would have his prison time effectively lengthened. (Special Housing Unit, Corcoran State Prison, California)

U.S. Appeals Court
GOOD TIME

Jehovah v. Clarke, 798 F.3d 169 (4th Cir. 2015). A Christian inmate brought a § 1983 action against the Commonwealth of Virginia and various employees and contractors of the Virginia Department of Corrections (VDOC), alleging that the defendants violated his free exercise rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by prohibiting him from consuming wine during communion, requiring him to work on Sabbath days, and assigning him non-Christian cellmates. Following dismissal of some claims, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact issues regarding the wine ban. The court also found that the inmate stated an RLUIPA claim based on cell assignment, a First Amendment claim based on cell assignment, and an Eighth Amendment deliberate indifference claim. The court noted that the inmate alleged that he was required to share a cell with a particular inmate who subjected him to "anti-Christian" rhetoric, and that he was "burdened, mocked, and harassed" on account of his religious views by being housed in a cell with that inmate.

The inmate alleged that his religion required him to abstain from working during the "Old Jewish" and "New Christic" Sabbaths, that his cleaning job would not accommodate his Sabbath observations, that his requests for job transfers were denied, that prison officials had not approved him for any job for which he applied in over three years. The inmate alleged that he would face sanctions and lose the opportunity to accrue good conduct allowances and earned sentence credits if he failed to work for 30 to 40 hours per week. (Sussex I Prison, Waverly, Virginia)

U.S. District Court
DUE PROCESS

Linton v. O'Brien, 142 F.Supp.3d 215 (D. Mass. 2015). An inmate brought a § 1983 action against the Commissioner of the Massachusetts Department of Corrections and prison officials, alleging that prison personnel violated his due process, equal protection, and 8th Amendment rights by not providing rehabilitative educational programs that awarded good time credits. The defendants moved to dismiss. The district court granted the motion, dismissing the complaint. The court held that prison officials' refusal to allow the inmate, who was housed in a disciplinary unit, an opportunity to participate in educational and rehabilitative programs in order to earn good time credits to reduce his sentence, did not violate the inmate's due process rights. According to the court, the inmate did not demonstrate that the officials' exercise of discretion to not provide good time credit opportunities to inmates in a disciplinary unit constituted an imposition of an atypical and significant hardship not normally within range of confinement expected for an inmate serving an indeterminate term. The court noted that the exercise of discretion by the Department of Corrections in imposing different classifications upon inmates, with respect to restricting the ability of an inmate housed in a prison disciplinary unit to earn good time credits to reduce his sentence, did not lack a rational basis, was not otherwise based on suspect classification, and thus did not violate the inmate's equal protection rights. The court found that the DOC had a legitimate public purpose in allocating limited resources available for earned good time credit programs to inmates who were motivated to make best use of them by improving their chances for successful return to society and as an inducement to control and reduce those inmates' tendencies towards violence. (MCI—Cedar Junction, Massachusetts)

U.S. District Court
LIBERTY INTEREST
DUE PROCESS

Mills v. Holmes, 95 F.Supp.3d 924 (E.D. Va. 2015). A state inmate, proceeding pro se, brought a § 1983 action against various prison employees, alleging violations of this Fourteenth Amendment due process rights in reducing his good conduct allowance class level. The defendants moved for summary judgment and the district court granted the motion. The court converted the inmate's action into a habeas corpus proceeding and ruled that the inmate did not have a protected liberty interest under Virginia law in his good conduct allowance earning level. The court noted that a state law stated that inmates "may be entitled to good conduct allowance," and while state regulations provided objective criteria for decision-making, the results were not guaranteed since the decisions could be rejected in another hearing in which officials had discretion, and any action was subject to approval by another official. (Deep Meadow Correctional Center, Virginia)

U.S. Appeals Court
REVOCATION

Santiago-Lugo v. Warden, 785 F.3d 467 (11th Cir. 2015). A prisoner filed a habeas corpus petition, seeking relief on due process grounds for disciplinary sanctions he received for possession of a cellular telephone, which included revocation of his good time credits. The district court denied the prisoner's petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was given sufficient notice of the charges against him, as required by due process. (Federal Correctional Complex at Coleman Medium Prison, Florida)

SECTION 21: GRIEVANCE PROCEDURES, PRISONER

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1980

U.S. District Court
PROCEDURES

Mahler v. Slattery, 489 F.Supp. 798 (E.D. Vir. 1980). Where the plaintiff failed to request forms from the proper party, he cannot complain that he has not been provided with access to the grievance system. (Petersburg Facility, Virginia)

1986

U.S. District Court
PROCEDURES

Spencer v. Moore, 638 F.Supp. 315 (E.D. Mo. 1986). An inmate's allegation that prison officials did not comply with the time limits provided by the "Residence Grievance Procedure" did not state a claim cognizable under 42 U.S.C.A. Section 1983. In the context of a state prison system, an inmate grievance procedure is not constitutionally required. As a result, if the state elects to provide a grievance mechanism, violations of its procedures do not deprive prisoners of federal constitutional rights. (Missouri)

1989

State Appeals Court
PROCEDURES
MONETARY
DAMAGES

McCullough v. Wittner, 552 A.2d 881 (Md. 1989). An inmate brought a common-law tort action against a correctional officer, seeking compensatory and punitive damages for assault and battery. The circuit court granted the officer's motion to dismiss on the ground of failure to exhaust administrative remedies, and the plaintiff appealed. After pursuing a writ of certiorari to the court of special appeals, the court of appeals, vacating and remanding, found that the inmate had to file a complaint and exhaust his remedies before the Inmate Grievance Commission prior to bringing a common-law tort action. Assuming that the Inmate Grievance Commission does not have statutory authority to make a monetary award, the inmate was still required to invoke and exhaust the administrative remedy. The court also found that the Inmate Grievance Commission and the Secretary of Public Safety and Correctional Services have the statutory authority to award monetary damages to an inmate as long as funds are appropriated or are otherwise properly available for the purpose. (Maryland Correctional Institution, Jessup, Maryland)

U.S. Appeals Court
RETALIATION

Sprouse v. Babcock, 870 F.2d 450 (8th Cir. 1989). An inmate brought a Section 1983 action against prison officials, claiming that his constitutional rights were violated by the deliberate filing of false disciplinary charges against him. The U.S. District Court entered a summary judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the filing of a disciplinary charge against the inmate, although otherwise not actionable under Section 1983, was actionable if done in retaliation for his having filed a grievance pursuant to established procedures. Prison officials cannot properly bring a disciplinary action against an inmate for filing a grievance that is determined by those officials to be without merit any more than they can properly bring a disciplinary action against an inmate for filing a lawsuit that is judicially determined to be without merit. The inmate filed an inmate grievance against a counselor for responding late to two previous requests. Two days later, the counselor wrote a disciplinary notice against the inmate for making false statements in the inmate grievance. After a hearing, the disciplinary committee found the inmate guilty of making false statements and imposed ten days of disciplinary detention, 90 days of administrative segregation and other sanctions. The discipline was later reversed because of a technical violation of the grievance procedure prohibiting employees involved in a grievance from participating in the disciplinary action. (Iowa State Penitentiary)

State Supreme Court
PROCEDURES

Staples v. Young, 438 N.W.2d 567 (Wis. 1989). Inmates brought an action under Section 1983, alleging due process claims based on the manner in which prison authorities processed their inmate complaints. The circuit court granted summary judgment to the defendants, and the inmates appealed. The court of appeals affirmed in part, reversed in part and remanded, and the inmates appealed. The state supreme court, reversing in part, found that the state's inmate complaint procedure did not create a constitutionally protected liberty right. Thus, the prison's failure to follow the grievance procedure time limits did not give a rise to a Section 1983 claim. The court noted that while state law utilized a mandatory language in creating an "Inmate Complaint Review System," with the purpose of affording inmates a procedure by which grievances may be "expeditiously raised, investigated and decided," no substantive rights are thereby created. If no official response is made within the required deadlines, the court noted, it is deemed that action is denied on the inmate complaint, and the inmate may proceed to the next step of the review process. The court also noted that expiration of the time limits do not preclude an inmate from pursuing his grievance through other legal processes. (Wisconsin State Prison)

U.S. Appeals Court
RETALIATION

Wildberger v. Bracknell, 869 F.2d 1467 (11th Cir. 1989). A prison inmate brought action challenging a grievance proceeding and segregated confinement. The U.S. District Court granted summary judgment in favor of the defendants, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's allegation that he had been disciplined as a result of filing several grievances asserted a claim for punishment due to exercise of the first amendment right of freedom of speech and the right to petition the government for redress of grievances. He also challenged the fairness and impartiality of the disciplinary committee. (Alabama State Department of Corrections)

U.S. District Court
RETALIATION

Williams v. Smith, 717 F.Supp. 523 (W.D. Mich. 1989). An inmate brought a civil rights action against prison officials. The district court found that the actions of the prison officials in citing an inmate for misconduct after he filed a grievance as a result of a particular incident did not violate his due process rights. A prisoner claiming in a civil rights action that he has been subject to retaliation for filing a grievance must prove far more than the lodging of a misconduct against him after he has exercised his first amendment right. He must also show that the prison official's conduct somehow transcended all bounds of reasonable behavior and so shocked the conscience. (Michigan)

1991

U.S. Appeals Court
RIGHT OF ACCESS
PROCEDURES

In Re Gaines, 932 F.2d 729 (8th Cir. 1991). A federal inmate brought a complaint against a case manager coordinator and the warden of the federal medical center seeking injunctive relief and damages for their denial of his right of access to the prison's administrative remedy procedure. The U.S. District Court granted the prison officials' motion for summary judgment, and the inmate appealed. The court of appeals, affirming the decision, found that the federal prison regulations creating an administrative remedy procedure do not, in and of themselves, create a due process liberty interest in access to that procedure; when a claim underlying an administrative grievance involves a constitutional right, the prisoner's right to petition the government for redress is a right of access to courts, which is not compromised by the prison's refusal to entertain grievances. (Federal Medical Center, Rochester, Minnesota)

U.S. District Court
RETALIATION

Rodriguez v. Kincheloe, 763 F.Supp. 463 (E.D. Wash. 1991). An inmate brought a civil rights action against prison officials. On the officials' motion for summary judgment, the district court found that the prison officials' confiscation of the inmate's "ace wrap" bandage and their informal resolution of the inmate's grievance concerning confiscation of the bandage was not in retaliation for the inmate's previous grievances and did not violate the inmate's First Amendment rights. The bandage had been confiscated because of legitimate penological concerns about unauthorized retention of the bandage, and officials determined that the issues raised were not grievable after the written infraction report was filed. (Washington State Penitentiary, Walla Walla, Washington)

1992

U.S. Supreme Court
MONETARY DAMAGES
PROCEDURES

McCarthy v. Madigan, 112 S.Ct. 1081 (1992). A federal prisoner brought a *Bivens* action seeking only money damages for denial of medical care. The U.S. District Court dismissed for failure to exhaust administrative remedies. The court of appeals affirmed. The U.S. Supreme Court reversed, finding that a prisoner who sought only money damages was not required to exhaust administrative remedies provided by the Bureau of Prisons' grievance procedure. The grievance procedure presented significant procedural hurdles to the assertion of a claim and did not provide for award of money damages. (Federal Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
RETALIATION

Wolfel v. Morris, 972 F.2d 712 (6th Cir. 1992). Prison inmates sued prison officials and the prison for an alleged civil rights violation based on imposition of discipline for circulation of a petition aimed at redressing grievances against prison conditions. The U.S. District Court found that prison regulations were unconstitutionally vague as applied, ordered expungement of the discipline, but found that the plaintiffs were not entitled to monetary damages, and appeals were taken. The court of appeals found that the prison regulation allowing punishment of the inmates for circulating the petition was unconstitutional where applied without adequate warning. However, the court noted that the prisoners were not entitled to an injunction to prevent prison officials from using the regulations to punish circulation of petitions in the future. The regulation would not be impermissibly vague if sufficient notice were given to prisoners that the regulations would be enforced. (Southern Ohio Correctional Facility)

1993

U.S. Appeals Court
PROCEDURES

Buckley v. Barlow, 997 F.2d 494 (8th Cir. 1993). An inmate brought a suit for state prison officials' alleged violation of his civil rights. The U.S. District Court entered judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming the decision, found that the inmate had no liberty interest in having his grievances processed by prison officials in accordance with federal regulations. In addition, the inmate had no Seventh Amendment right to a jury trial in a prison disciplinary setting. The deduction of one half of the inmate's idle pay pursuant to the prison disciplinary committee's restitution order did not amount to cruel and unusual punishment on the theory that it thereby deprived the inmate of funds to purchase personal hygiene items. (Iowa)

U.S. District Court
PROCEDURES

Curry v. Hall, 839 F.Supp. 1437 (D.Or. 1993). An inmate brought a civil rights action seeking an injunction precluding the application of a rule that allows prisoners to be disciplined for giving false statements to prison officials in written prison grievances. The defendants moved for judgment on the pleadings. The district court found that the rule allowing prisoners to be disciplined for giving false statements to prison officials did not violate the First Amendment, despite its failure to include an actual malice standard. The fact that a false statement was included in a grievance did not give the false statement special First Amendment status. False statements made by inmates to prison guards significantly impede the government's interest in preserving safety and order in the prison system. (Oregon Department of Corrections)

1994

U.S. Appeals Court
RETALIATION

Black v. Lane, 22 F.3d 1395 (7th Cir. 1994). An Illinois inmate filed a Section 1983 suit against prison officials, alleging violation of his civil rights in the form of harassment, false disciplinary charges, segregation, and other punishment. A hearing was held on the issues of damages. The U.S. District Court granted the inmate partial relief, but dismissed numerous defendants. The inmate appealed. The appeals court, vacating and remanding, found that the inmate sufficiently alleged continuous acts of harassment and beatings since the time he filed an administrative complaint with the Department of Justice to state a cause of action for retaliatory treatment. In addition, the inmate sufficiently alleged that each prison official named as a defendant in the complaint, except for the prison's chief administrative officer, was involved in beatings or other forms of harassment inflicted upon the inmate, so that no defendant other than the chief administrative officer should have been dismissed from the suit. (Menard Correctional Center, Illinois)

U.S. Appeals Court
RIGHT OF ACCESS

Holloway v. Hornsby, 23 F.3d 944 (5th Cir. 1994). An inmate filed a pro se in forma pauperis action alleging denial of access to prison grievance procedures and threats and taunts for filing prior grievances. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The appeals court found that the inmate's action was frivolous and subject to dismissal. In addition, further frivolous filings by the inmate would result in an imposition of the full panoply of sanctions available to court. (Washington Correctional Institute)

U.S. District Court
RETALIATION

Howard v. Leonardo, 845 F.Supp. 943 (N.D.N.Y. 1994). An inmate brought a civil rights action claiming that he was confined to involuntary protective custody (IPC) in retaliation for the exercise of his constitutional rights. On the defendants' motion for summary judgment, the district court found that prison officials had a legitimate reason to confine the inmate to IPC, despite the inmate's claim that he was confined to IPC in retaliation for having drafted grievance forms and distributed them throughout the facility. Officials found a letter written by the inmate to a fellow inmate which constituted evidence of existence of an extortion attempt and threats of violence. (Great Meadow Correctional Facility, New York)

U.S. Appeals Court
RETALIATION

Lowrance v. Achtyl, 20 F.3d 529 (2nd Cir. 1994). An inmate sued prison employees for alleged civil rights violations. The U.S. District Court granted summary judgment for the prison employees, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's Section 1983 claim, in which he alleged that a correction officer filed a misbehavior report against him in retaliation for his filing of a grievance, was properly

dismissed on summary judgment. The inmate admitted to engaging in the conduct that formed the basis of the misbehavior report, and thus, even without any improper motivation, the report would have been issued on proper grounds. The inmate's prehearing confinement in administrative segregation did not deprive him of due process. The inmate's refusal to comply with an order of a corrections officer in the mess hall created at least the potential for a disruption of order and security of the prison. Subsequent administrative confinement was not arbitrary or conscience-shocking in the constitutional sense. (Shawangunk Correctional Facility, New York)

U.S. District Court
PROCEDURES

Meadows v. Gibson, 855 F.Supp. 223 (W.D. Tenn. 1994). A prisoner brought a Section 1983 action against a prison counselor to recover for grievance procedures. The district court found that a counselor can instruct a prisoner to complete only part of a grievance form or to limit the scope of the grievance to one specific matter, since prison officials may set the terms and conditions under which a grievance may be filed. (Shelby County Correctional Center, Tennessee)

U.S. District Court
REDRESS OF
GRIEVANCES

O'Keefe v. Murphy, 860 F.Supp. 748 (E.D. Wash. 1994), reversed 82 F.3d 301. An inmate brought a Section 1983 action against penitentiary administrators, seeking to enjoin them from treating certain of his mail as regular mail that could be opened and read rather than as legal mail. The defendants moved for summary judgment. The district court found that the policy permitting prison officials to read prisoners' grievances to government agencies or officials violates the prisoners' First Amendment right to petition the government for redress of grievances. However, grievance mail may be opened and inspected in a prisoner's presence. Upon the government's motion for reconsideration and the inmate's motion for sanctions, the court found that the requirement that inmates' correspondents label incoming mail as grievance mail was unconstitutional. On appeal, the appeals court reversed, finding that the practice of refusing to treat grievances as legal mail did not violate the First Amendment. (Washington State Penitentiary)

U.S. District Court
RETALIATION

Riley v. Church, 874 F.Supp. 765 (E.D. Mich. 1994). A prisoner sued a corrections officer under Section 1983 for violations of his rights under the First and Fourteenth Amendments. On the correction officer's motion for summary judgment, the district court found that even though the prisoner raised a genuine issue of material fact regarding whether the corrections officer planted contraband in his cell to support false misconduct charges, he failed to prove that retaliation for his filing of a grievance against another corrections officer was the substantial and motivating factor for the alleged planting of the contraband. (Michigan Department of Corrections)

U.S. District Court
DUE PROCESS
REVOCATION

Scaife v. Wilson, 861 F.Supp. 1027 (D.Kan. 1994). An inmate filed a civil rights complaint against prison officials alleging he was denied due process in prison disciplinary proceedings. The district court found that the inmate was not subjected to additional sanction without due process when he lost 30 days of good time during the quarter in which he was sanctioned to 15 days of solitary confinement for refusing to provide a urine sample for drug testing. Regulations authorize the loss of up to 50% of discretionary credits available quarterly for a Class I offense. The inmate lost no good time already credited. (El Dorado Correctional Facility, El Dorado, Kansas)

U.S. District Court
PROCEDURES
RETALIATION

Williams v. Kling, 849 F.Supp. 1192 (E.D.Mich. 1994). A prisoner brought a Section 1983 action against prison officials claiming that he was denied a full and fair grievance process and that prison officials retaliated against him for filing the grievance. The district court found that the Michigan law affording prisoners five levels of administrative review of grievances satisfied procedural due process requirements. In addition, the prisoner did not state an actionable civil rights claim based on the loss of personal papers during a shakedown search as the prisoner had an adequate postdeprivation remedy under state law. Finally, the prisoner did not show that the intent to retaliate was the substantial factor behind the decision to issue a misconduct ticket. The prison official met her burden of showing a legitimate reason for the issuance of a misconduct ticket where her claim that the prisoner was hostile and insolent was un rebutted. (State Prison of Southern Michigan)

1995

U.S. Appeals Court
RETALIATION
PROCEDURES

Bradley v. Hall, 64 F.3d 1276 (9th Cir. 1995). A state prisoner filed a § 1983 action against the director of the Oregon Department of Corrections challenging the constitutional validity of prison regulations which prohibit the use of disrespectful language in a grievance. The district court found the regulations to be facially unconstitutional and the appeals court agreed. The appeals court held that prison officials may not punish a prisoner for using hostile, sexual, abusive or threatening language in a written grievance. The court noted that punishing a prisoner for the contents of a grievance burdens a prisoner's ability to file grievances and impacts his constitutionally protected rights under the Fourteenth and First Amendments. The court found that the line between an honest and unabashed airing of a grievance and the prohibited language was hazy and left a prisoner guessing as to whether he would be punished for his complaint. The prisoner was found guilty of violating one of three prison disrespect regulations and was punished with a 14-day loss of privileges, which was suspended on the

condition that the prisoner have 30 days of clear conduct. The district court found that it is well-established that an inmate cannot be punished for the act of filing a grievance. Although speech contained in an inmate grievance is not clearly protected under the First Amendment, the court suggested that neither has it been clearly held to be unprotected. The district court ruled that prisoners should be allowed to file grievances within the prison system without fear of being sanctioned for their choice of words, and that inmates should be encouraged to use the prison grievance system rather than resort to the courts. The district court enjoined the prison from enforcing any disrespect rules against language within the inmate's grievance. (Oregon Department of Corrections)

U.S. District Court
RETALIATION
PROCEDURES

Brown v. Carpenter, 889 F.Supp. 1028 (W.D.Tenn. 1995). A state inmate brought a § 1983 action against prison officials alleging that his due process rights were violated, that he was the victim of retaliation, and that he had a right to investigate the activities of prison staff. The district court dismissed the complaint, ruling that the inmate had no right protecting him from being charged with a disciplinary offense, and that some evidence supported the prison disciplinary board's decision that the inmate had committed the offense of disrespect. The prisoner had refused to abide by prison procedures and had announced his intention to abuse the prison grievance procedure by acting as a focal point for complaints about the administration. The court noted that the First Amendment right of access to courts does not guarantee any constitutional right to provide legal assistance to other inmates or to act in any representative capacity as an ombudsman, general advocate, or agitator. The court also held that reasonable limitations on the use of the prison grievance system and rules that require inmates to display respect for staff members in the use of that system are clearly related to the core function of maintaining security. (West Tennessee High Security Facility)

U.S. District Court
RETALIATION

Chapple v. Keane, 903 F.Supp. 583 (S.D.N.Y. 1995). An inmate brought a pro se action against a correction officer and others alleging that he was the subject of a false misbehavior report written in retaliation for having filed a prior unrelated inmate grievance complaint. The district court found that the single grievance filed by the prisoner which did not mention the correction officer and about which the officer had no knowledge was not a sufficient basis to create a claim of retaliation. (Sing Sing Correctional Facility, New York)

U.S. District Court
RETALIATION

Ishaq v. Compton, 900 F.Supp. 935 (W.D.Tenn. 1995). An inmate filed a § 1983 suit against state prison officials seeking damages for violation of his constitutional rights which allegedly resulted from denial of his grievances, a disciplinary conviction, verbal threats and a transfer. The district court dismissed the case, finding that denying the inmate's request to telephone his attorney did not deny him the right of access to courts. The court held that the inmate's transfer to another facility following threats by another inmate did not violate due process, regardless of the motivation of prison officials, given that the transfer did not produce a significant change in the conditions of his sentence. The court also found that the inmate's substantive due process rights were not violated even if the transfer was in retaliation for the inmate's habit of filing numerous grievances. (West Tennessee High Security Facility)

U.S. District Court
RIGHT OF ACCESS

Muhammad v. Hilbert, 906 F.Supp. 267 (E.D.Pa. 1995). A county prison inmate filed a pro se § 1983 action against a correctional officer seeking declaratory judgment, permanent injunction, temporary restraining orders and compensatory and punitive damages. The inmate alleged that the officer interfered with his right of access to courts by denying him access to the prison law library one time when he was tardy. The district court granted summary judgment for the correctional officer finding that a one-time denial of access to the prison law library did not infringe on the inmate's rights. The inmate failed to show that the denial affected his impending litigation in some way, and the inmate used the library eleven other times during the month in question. The inmate had also alleged that the officer's statement to him, that filing a grievance about his denial of access might be in vain, was not harassment that infringed on the inmate's right of access to courts. The inmate claimed that the officer "verbally attacked and harassed him" while he was using the library in response to his filing a grievance. (Lehigh County Prison, Pennsylvania)

U.S. District Court
RETALIATION

Quinn v. Cunningham, 879 F.Supp. 25 (E.D. Pa. 1995). An inmate brought an action against prison officials in charge of a prison shoe plant, alleging that prison officials denied him a position in the plant based on his race and that prison officials denied the inmate certain privileges after he filed a grievance. The prison officials moved for summary judgment. The district court found that the inmate's constitutional right to due process was not violated when he was denied a position in the prison shoe plant, even if the inmate was denied a position based on his race, where the inmate did not have liberty or property interest in any prison work assignment. However, material issues of fact precluded summary judgment for prison officials in the inmate's action which alleged an equal protection violation. Although the inmate had no right to any particular prison job, prison officials could not discriminate against him on the basis of his race in work assignments. Material issues of fact as to whether prison officials abandoned the practice of giving prisoners extra paid hours for doing extra work across the board, or whether they singled out the inmate in retaliation for filing a grievance, precluded summary judgment for the prison officials. The prison officials in charge of the prison shoe plant were not entitled to qualified immunity. Reasonable officials in the prison officials' position could not have believed that discriminating on the basis of race in prison work

assignments and retaliating against inmates for filing grievances were lawful actions in light of clearly established law and information that they possessed at the time. (State Correctional Institution, Graterford, Pennsylvania)

1996

U.S. Appeals Court
PROCEDURES

Duamutef v. O'Keefe, 98 F.3d 22 (2nd Cir. 1996). An inmate filed a pro se action asserting violation of his constitutional rights as the result of a disciplinary response to his preparation and circulation of a petition seeking improvements in prison conditions. The district court granted summary judgment in favor of the defendant and the appeals court affirmed. The appeals court held that the Prison Litigation Reform Act (PLRA) filing fee requirement did not apply because the inmate's appeal had been fully briefed before either party had notice of a decision interpreting PLRA's fee provisions to apply retroactively. The appeals court also found that legitimate safety concerns justified the prison's prohibition on the preparation and circulation of inmate petitions in light of the existence of an effective procedure for inmates to communicate their individual grievances. (Gouverneur Correctional Facility, New York)

U.S. Appeals Court
RETALIATION

Graham v. Henderson, 89 F.3d 75 (2nd Cir. 1996). An inmate filed a pro se action claiming racial discrimination and alleging that prison officials unconstitutionally retaliated against him for protesting the proposed loss of showers in a prison workshop. The district court granted summary judgment for the defendants and the appeals court vacated in part and affirmed in part. The appeals court held that fact issues precluded summary judgment for the officials. The officials claimed that the inmate was circulating a petition urging a work slowdown in violation of prison rules, but the inmate and other prisoners claimed he was merely collecting names of prisoners as part of a grievance process and that there was no work to be done on the day the inmate was accused of organizing a slowdown. (Auburn Correctional Facility, New York)

U.S. District Court
RIGHT OF ACCESS
RETALIATION

Hancock v. Thalacker, 933 F.Supp. 1449 (N.D.Iowa 1996). Prisoners sued a warden and other prison officials alleging that being disciplined for filing grievances containing false or defamatory statements violated their constitutional right to petition for the redress of grievances. The district court refused to certify the suit as a class action but denied summary judgment for the defendants, allowing the inmates to pursue their claims for declaratory and injunctive relief. The court found that disciplining inmates for false or defamatory statements in grievances based on less than a preponderance, or greater weight, of evidence that the inmate knowingly made such statements, would violate an inmate's right of petition. The court also found that an inmate's rights would also be violated if the inmate were not provided with notice of the burden of proof to sustain the charge. The court noted that interference with an inmate's "kite," which was the routine means of direct communication with the warden, would constitute a chilling of the inmate's right to petition for redress of grievances. (Iowa Men's Reformatory)

U.S. District Court
RETALIATION

Hill v. Blum, 916 F.Supp. 470 (E.D.Pa. 1996). A state inmate who was a Muslim brought a civil rights action against a prison guard who conducted a part-down search that allegedly included a brief (two seconds) touching of the inmate's genitals, which allegedly violated the inmate's moral, ethical and religious beliefs. The district court granted summary judgment for the guard, finding that the search did not violate the free exercise rights of the inmate nor the Fourth Amendment. The court also found that the search did not violate the inmate's due process rights and did not constitute cruel and unusual punishment. The court noted that pat-down searches were conducted routinely for security reasons and the guard's search was in accordance with prison regulations. The inmate also alleged that he was removed from his position in the prison kitchen as a result of retaliation for filing a grievance against the guard. The court found that the inmate was not subjected to retaliation, noting that the guard was not a member of the support team that decided to remove the inmate from his kitchen position. (State Correctional Facility, Frackville, Pennsylvania)

U.S. Appeals Court
PROCEDURES

O'Keefe v. Van Boening, 82 F.3d 322 (9th Cir. 1996). A state inmate sued prison officials for their refusal to treat his grievance letters to state agencies and officials as "legal mail." The district court entered summary judgment for the inmate and the prison officials appealed. The appeals court reversed the lower court decision, finding that the prison officials' refusal to treat grievances as legal mail did not violate the inmate's First Amendment rights. Prison policies exempted legal mail from inspection, but the appeals court ruled that inspecting grievance letters served a legitimate penological interest, even if it might have a chilling effect on the prisoner's First Amendment right to petition government for redress of grievances. (Washington State Penitentiary)

U.S. Appeals Court
RETALIATION

Penrod v. Zavaras, 94 F.3d 1399 (10th Cir. 1996). An inmate brought a § 1983 suit against prison officials alleging several violations. The district court granted summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that restrictions placed on the inmate's law library access as the result of his status as an "unassigned" prisoner (one who does not have a job or program assignment), did not violate his right of access to courts. The appeals court held that prison officials were not

entitled to qualified immunity on the claim that they retaliated against the inmate for bringing suits against the prison. The appeals court found that summary judgment was precluded on the inmate's claim that denial of items of personal hygiene caused the inmate serious harm. The appeals court held that placement of the inmate in an administrative segregation unit for prisoners who did not have jobs or participate in programs did not violate due process, as the conditions of segregation did not impose an atypical and significant hardship on the inmate. (Limon Correctional Facility, Colorado)

U.S. District Court
RIGHT OF ACCESS

Stewart v. Block, 938 F.Supp. 582 (C.D.Cal. 1996). An inmate brought a § 1983 action against a county sheriff alleging several constitutional violations while he was incarcerated. The district court granted summary judgment in favor of the sheriff. The court found that the inmate's failure to allege an injury as the result of his claim that he was denied meaningful access to a law library was fatal to his claim. The court found that the inmate was not entitled to a grievance procedure. The court held that the inmate's admission that the meals he was provided met his nutritional needs was fatal to his claim that the sheriff violated the Eighth Amendment by placing him on a disciplinary diet. (Los Angeles Co. Jail, California)

1997

U.S. District Court
DUE PROCESS

Allen v. Wood, 970 F.Supp. 824 (E.D.Wash. 1997). An inmate brought a civil rights action against prison officials challenging the rejection of some of his mail. The district court held that the rejection of sexually explicit homosexually oriented materials did not violate the inmate's First Amendment rights, nor was the rejection cruel and unusual punishment in violation of the Eighth Amendment. The inmate was given notice of each mail rejection and was provided with the opportunity to appeal. The court also held that the rejection did not violate due process or equal protection. The court upheld a policy which prohibited inmates from receiving oversized greeting cards. The court also found that a prison rule that prohibited inmates from receiving loose postage stamps in the mail did not violate the inmate's First Amendment free speech rights. According to the court, the policy advanced interests in penal security and order and prohibited contraband trading. The prisoner was afforded reasonable opportunities to buy loose postage stamps at a prison store. (Washington State Penitentiary)

U.S. Appeals Court
RETALIATION

McLaurin v. Cole, 115 F.3d 408 (6th Cir. 1997). An inmate brought a § 1983 action against a corrections officer alleging that the officer issued a major misconduct ticket to the inmate in retaliation for a grievance the inmate had filed against the officer. The inmate's grievance had claimed that the officer destroyed his legal materials and deprived him of his religious books. The district court dismissed the action and the appeals court affirmed. The appeals court held that the inmate failed to show that his filing of a grievance was a substantial or motivating factor behind the officer's issuance of a misconduct ticket. (State Prison of Southern Michigan)

U.S. District Court
EXHAUSTION

Morgan v. Arizona Dept. of Corrections, 967 F.Supp. 1184 (D.Ariz. 1997). A prisoner brought a § 1983 action against a corrections department and its officers. The district court dismissed the case, finding that the prisoner, who did not file an initial grievance, failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). (Arizona State Prison Complex)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Morgan v. Arizona Dept. of Corrections, 976 F.Supp. 892 (D.Ariz. 1997). An inmate brought a § 1983 action against corrections officials stemming from an alleged assault by fellow inmates. The district court dismissed the action, finding that the inmate's failure to file an initial grievance under the corrections department's procedures deprived the court of jurisdiction because he failed to exhaust his administrative remedies. According to the court, the Prison Litigation Reform Act (PLRA) has made exhaustion provisions mandatory rather than directory, and courts no longer possess the discretion in the absence of exhaustion. The inmate had asked for a thirty day continuance to amend his complaint to prove he had exhausted his administrative remedies. (Arizona State Prison Complex, Winslow, Arizona)

U.S. District Court
RIGHT OF ACCESS
RETALIATION

Wilson v. Horn, 971 F.Supp. 943 (E.D.Pa. 1997). An inmate brought a § 1983 action asserting a number of claims against corrections officials. The district court granted summary judgment for the defendants, finding that the inmate had no constitutional right to a grievance procedure, and that nothing in the record suggested that any disciplinary action was taken against the inmate for filing grievances. The court noted that a state creation of a grievance procedure does not create any federal constitutional rights, and that while prisoners have a constitutional right to seek redress of their grievances from the government, that right is a right of access to courts. (SCI-Frackville, Pennsylvania)

1998

U.S. District Court
RETALIATION

Anthony v. Burkhardt, 28 F.Supp.2d 1239 (M.D.Fla. 1998). An inmate brought a § 1983 action against employees of a private, nonprofit corporation which operated correctional work programs for the Florida Department of Corrections (DOC), claiming he was denied an office position in a program and was terminated based on his race for utilizing the program's grievance procedure. The district court granted summary judgment for the employees,

finding they were entitled to qualified immunity from liability. The court noted that the employees had no control over which inmates were assigned by the DOC to the factory, and that the inmate did not allege facts that contradicted the DOC's claim that he was terminated for unauthorized use of a copier. (PRIDE of Florida's furniture factory at Avon Park Correctional Institution, Florida)

U.S. Appeals Court
EXHAUSTION

Bishop v. Lewis, 155 F.3d 1094 (9th Cir. 1998). An inmate brought a § 1983 action alleging unhealthy air in a prison. The district court dismissed the complaint. The appeals court reversed and remanded, finding that a Prison Litigation Reform Act (PLRA) provision that required exhaustion of administrative remedies did not apply retroactively. The appeals court also found that the inmate had substantially complied with a court order to exhaust internal prison remedies. (Arizona)

U.S. Appeals Court
RETALIATION

Cowans v. Warren, 150 F.3d 910 (8th Cir. 1998). An inmate brought a § 1983 action against correctional officers and others, alleging that they retaliated against him for challenging his conduct violations. The district court granted summary judgment against the inmate and the appeals court affirmed. After the inmate had been found guilty of a conduct violation he filed an Informal Resolution Request (IRR) challenging the charge. In the IRR the inmate described officers as "racist," "supremist" and "dogs." The inmate was found guilty of violating a rule that prohibited the use of abusive and insulting language, based on the contents of the IRR. The appeals court held that the language at issue was not necessary for the advance of the inmate's underlying challenges to his conduct violation. (Missouri)

U.S. District Court
EXHAUSTION

Freeman v. Godinez, 996 F.Supp. 822 (N.D.Ill. 1998). A prisoner sued prison officials under § 1983 as the result of an attack on him by fellow prisoners. The district court denied summary judgment for the officials, finding that the inmate stated a claim arising from the attack. The court held that the prisoner was not required to exhaust his administrative remedies before filing the § 1983 action, where the prison grievance procedure could not have compensated the prisoner for his injuries once they occurred. The prisoner alleged that prison officials knew he was on a "hit list" and interrogated him about gang activities, which may have put him in danger. He requested and was denied protection twice. He was later attacked by three prisoners and stabbed in his back, chest and face, and beaten with pipes. (Western Illinois Correctional Center)

U.S. Appeals Court
SENTENCE REDUC-
TION

Fristoe v. Thompson, 144 F.3d 627 (10th Cir. 1998). A prisoner who was denied a sentence reduction petitioned for a writ of habeas corpus. The district court denied the petition, but the appeals court reversed and remanded. The appeals court held that the federal Bureau of Prisons (BOP) violated the statute authorizing early release by considering sentencing factors when it determined whether a prisoner was convicted of a crime of violence. According to the court, the plain language of the statute referred directly to the offense for which the prisoner was convicted. The appeals court held that the BOP did not violate the ex post facto clause when it denied early release. (Fed. Bur. of Prisons, Oklahoma)

U.S. District Court
RETALIATION

Garcia v. District of Columbia, 56 F.Supp.2d 1 (D.D.C. 1998). Prisoners filed a § 1983 action alleging that corrections officials retaliated against them for filing grievances against a correctional officer. The court refused to dismiss the case against the correctional officer and her supervisor finding that the prisoners' First Amendment claims were not barred by qualified immunity. The prisoners alleged that the correctional officer began writing fraudulent disciplinary reports against them after they filed their grievances. The court found that the prisoners stated a claim when they alleged that he ignored their allegations of sexual harassment against a subordinate, threatened another prisoner with punitive segregation if he was found to be assisting another prisoner in writing grievances, and ordered prison officials to specifically target the prisoners during a mass shakedown of a housing unit. One prisoner alleged that the female correctional officer propositioned him to enter into a sexual relationship with her and when he refused she began retaliating against him. The prisoner alleged that the female officer would wake him at 3:30 in the morning and order him to dress and report to the control center. (Lorton Medium Security Facility, Virginia, District of Columbia Department of Corrections)

U.S. District Court
RIGHT OF ACCESS

Harksen v. Garratt, 29 F.Supp.2d 265 (E.D.Va. 1998). An inmate brought a § 1983 action against state prison officials alleging violation of his Eighth and Fourteenth Amendment rights alleging they failed to adequately respond to his grievances regarding his stolen radio. The district granted summary judgment for the officials, finding that although under state law, tort claim procedures were available to the inmate to recover the value of his lost property, he had no constitutionally protected right to such procedures. The court noted that even random, unauthorized deprivations of prisoners' personal property by state officials do not offend due process if constitutional requisites are satisfied by adequate post-deprivation state remedies. (Greensville Correctional Center, Virginia)

U.S. District Court
EXHAUSTION

Hattie v. Hallock, 8 F.Supp.2d 685 (N.D. Ohio 1998). Prisoners brought a § 1983 action against prison officials and staff to recover for the seizure of filing cabinets and for their removal from positions as library assistants. The district court held that one prisoner had exhausted his administrative remedies by filing with the chief inspector his grievance against the warden, but the other prisoners had not exhausted their remedies. (Grafton Correctional Institution, Ohio)

- U.S. District Court
RETALIATION
- Johnson v. Freeburn, 29 F.Supp.2d 764 (E.D.Mich. 1998). An inmate brought a § 1983 suit against a prison officer alleging that the officer retaliated against him for having reported the officer's threats. The district court held that summary judgment was precluded by a fact question as to whether the officer ordered tower guards to shoot the inmate. The court noted that a credibility dispute, such as whether the officer actually made the alleged threat, was not appropriately resolved on a motion for summary judgment. (Michigan Department of Corrections)
- U.S. District Court
RETALIATION
- Lewis v. Cook County Dept. of Corrections, 28 F.Supp.2d 1073 (N.D.Ill. 1998). An inmate brought a pro se § 1983 case against county correctional officers in their individual and official capacities. The district court that the inmate stated a claim for retaliation against the officers in their individual capacities by alleging that he was terminated from his position as law library cleaner one month after he filed a grievance against a corrections officer. The court held that the inmate's complaint did not adequately allege that the officers were policymakers of the county department of corrections, so as to support a § 1983 claim against the officers in their official capacities. The court also held that an officer's conduct in forbidding the inmate from continuing with his law library job due to a "hickey" on his neck did not violate the inmate's equal protection rights. (Cook County Department of Corrections, Illinois)
- U.S. District Court
RETALIATION
- Mahotep v. DeLuca, 3 F.Supp.2d 385 (W.D.N.Y 1998). A prison inmate sued prison officials under § 1983. The district court held that the inmate presented fact issues with regard to allegations of physical assault by officers. The inmate claimed that as a result of an assault by officers he suffered a ruptured testicle, groin damage, severe pain, a pinched nerve in his ankle, and had a severe asthmatic attack that necessitated a long hospital stay. The court found that allegations of retaliation for legal action presented fact issues, where the inmate's conduct in filing previous grievances against the same officers was clearly protected by the First Amendment, and the alleged assault occurred approximately one week after the inmate filed the grievances. (Attica Correctional Facility, New York)
- U.S. District Court
RETALIATION
- McCain v. Scott, 9 F.Supp.2d 1365 (N.D.Ga. 1998). A prisoner brought a pro se Bivens action against federal penitentiary officials in their individual capacities, for damages alleging that they retaliated against him for filing administrative complaints against prison staff. The prisoner alleged that officials retaliated against him by increasing his security-level classification and by transferring him to another facility to be murdered. The court found that the prisoner failed to show a causal relationship between the events, but gave the prisoner permission to amend his complaint. (U.S. Penitentiary, Atlanta, Georgia)
- U.S. District Court
EXHAUSTION
MONETARY
DAMAGES
- Moore v. Smith, 18 F.Supp.2d 1360 (N.D.Ga. 1998). An inmate brought a civil rights against a corrections officer and commissioner of corrections, seeking the removal of the officer from his position and monetary damages for an alleged assault. The district court dismissed the case for failing to exhaust administrative remedies, finding that the case involved "prison conditions" and therefore exhaustion was required. The court held that under the provisions of the Prison Litigation Reform Act (PLRA), exhaustion was required where the inmate sought monetary damages, even though such damages are not available under prison grievance procedures. The inmate alleged that the officer grabbed his fan and hit him in the face and head. (Hays Correction Institution, Georgia)
- U.S. District Court
RETALIATION
- Sprau v. Coughlin, 997 F.Supp. 390 (W.D.N.Y. 1998). A prisoner sued state corrections officials alleging that they deprived him of his rights to freedom of speech and to petition the government for redress of grievances. The district court denied summary judgment for a corrections officer, finding that a genuine issue of material fact existed as to whether the officer assaulted the prisoner in retaliation for the prisoner's threat of filing a grievance against him. The officer allegedly grabbed the prisoner behind the neck and hit him several times. (Attica Correctional Facility, New York)
- U.S. District Court
EXHAUSTION
MONETARY
DAMAGES
- White v. Fauver, 19 F.Supp.2d 305 (D.N.J. 1998). Inmates filed a class action civil rights suit alleging that prison officials and guards engaged in a pattern of physical abuse and threats, and subjected inmates to a series of unconstitutional living conditions, in retaliation for the murder of a prison guard. The district court held that the inmates were not required to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA) because the PLRA term "prison conditions" does not encompass intentional physical attacks, conspiracy to use excessive force to intimidate inmates, threats of further physical violence to conceal prior attacks, alleged false disciplinary charges and retaliation for filing suit, or claims for compensatory and punitive damages where monetary relief was not available under the state's inmate grievance procedure. But the court held that allegations of mere threats do not state a civil rights claim, and that prison officials were entitled to qualified immunity with respect to allegations of unconstitutional prison conditions. (Bayside State Correctional Facility, New Jersey)
- 1999
- U.S. District Court
PROCEDURES
- Caldwell v. Hammonds, 53 F.Supp.2d 1 (D.D.C. 1999). A prisoner brought a § 1983 action for damages for injuries allegedly suffered. The district court held that the prisoner failed to state a claim with his allegations of limited access to legal materials because he did not allege a

specific injury as a result. But the court held that the prisoner stated a claim for deliberate indifference because his prescribed treatment for skin cancer was delayed. The court also found a claim for deliberate indifference in the prisoner's allegations that he was exposed to secondary tobacco smoke and to smoke from fires set in his cell block. The court noted that although prison policy prohibited smoking in the prison, tobacco products were sold in the prison canteen and correctional officers permitted smoking in cell blocks. The court found that pervasive unsanitary and unhealthy conditions in his cell block existed for a long time and were obvious to any observer. Because the Director of the Department of Corrections had notice of these conditions, the prisoner stated a § 1983 claim for violation of the Eighth Amendment. (Cell Block 3, Maximum Security Facility, District of Columbia Department of Corrections, Lorton, Virginia)

U.S. Appeals Court
RETALIATION

Cooper v. Schriro, 189 F.3d 781 (8th Cir. 1999). A prisoner brought a pro se § 1983 action against a prison and medical services employees. The district court dismissed the case and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner stated a cause of action against a health care administrator for an Eighth Amendment violation for allegedly denying treatment after the prisoner filed a request regarding painful decayed and cracked teeth. The appeals court also held that the prisoner's allegation that corrections officers shut off his water for five days or threatened his safety, because he used the prison grievance system, were sufficient to state a retaliation claim under § 1983. (Missouri Department of Corrections)

U.S. District Court
MONETARY
DAMAGES

Davis v. Woehrer, 32 F.Supp.2d 1078 (E.D.Wis. 1999). A state prisoner filed a pro se civil rights action alleging his Eighth Amendment rights were violated because he was knowingly ordered by prison officials to operate a meat slicer without the proper training. The prisoner claimed that he was severely injured while operating the meat slicer. The defendants moved to have the case dismissed because the prisoner had failed to exhaust administrative remedies. The district court denied the motion, ruling that the exhaustion requirement of the Prison Litigation Reform Act (PLRA) does not apply where the plaintiff is pursuing only monetary damages and the prison grievance procedure does not provide for monetary relief. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
RETALIATION

Jones v. Greninger, 188 F.3d 322 (5th Cir. 1999). A prisoner brought a § 1983 action against prison officials alleging that they engaged in a conspiracy to deny his constitutional rights by limiting his right of access to courts in retaliation for his filing of various grievances. The district court dismissed all claims except for one retaliation claim against one official. The appeals court affirmed. The appeals court also held that limiting the prisoner to five hours of library time a week as the result of a job reassignment did not violate his right of access to court. (Federal Correctional Institute at Seagoville, Texas)

U.S. District Court
DUE PROCESS

Rienholtz v. Campbell, 64 F.Supp.2d 721 (W.D.Tenn. 1999). A prison inmate brought a pro se action under § 1983 alleging that termination from his prison law library position, his transfer to another facility, and his termination from a commissary clerical job, resulted in violation of his First Amendment and due process rights. The district court held that the handling of the inmate's prison grievances did not implicate his First Amendment right of access to courts. According to the court, right of access applies only to court actions, not prison grievances. The court noted that although mandatory language in state prison regulations might have been violated, these procedural regulations did not implicate a protected liberty interest. (West Tennessee Prison Site I, Henning, Tennessee)

U.S. Appeals Court
RETALIATION

Rouse v. Benson, 193 F.3d 936 (8th Cir. 1999). A state prisoner brought a civil rights action against prison officials alleging that his transfer from one prison to another was in retaliation for his exercise of his Native American religion and violated his equal protection rights. The district court entered summary judgment in favor of the officials and the prisoner appealed. The appeals court reversed and remanded, finding that fact issues as to whether the transfer was in retaliation for exercise of a First Amendment activity precluded summary judgment. The prisoner had been convicted and incarcerated in Iowa but was transferred at his request to a state prison in Minnesota where he hoped to have greater opportunities to practice his Native American religion, specifically the practices of Lakota. While incarcerated in Minnesota he complained about various religious restrictions and filed several grievances. He was returned to Iowa and alleged that his transfer was in retaliation for his grievances and his efforts to practice his religion. (MN Corr. Facil., Stillwater)

U.S. District Court
EXHAUSTION
MONETARY DAMAGES

Sallee v. Joyner, 40 F.Supp.2d 766 (E.D.Va. 1999). An inmate brought a Bivens claim seeking money damages. The district court dismissed the case finding that under the provisions of the Prison Litigation Reform Act (PLRA) the inmate was required to exhaust his administrative remedies before filing suit in federal court. The court noted that inmates confined in federal prisons must grieve their claims through the Administrative Remedy Program (ARP), even though institutions cannot award monetary relief. (Fed. Bureau of Prisons, F.C.I. Petersburg, Virginia)

U.S. Appeals Court
RETALIATION

Shehee v. Luttrell, 199 F.3d 295 (6th Cir. 1999). A prisoner sued prison employees and officials claiming violation of his constitutional rights in connection with his termination from a prison work assignment. The district court denied the defendants' motion to dismiss but the appeals court reversed and remanded. The appeals court held that officials who were not involved in the

inmate's termination from his commissary job and whose only roles involved the denial of administrative grievances or the failure to act, were not liable under § 1983. The appeals court also held that the commissary supervisor and warehouse foreman could not be liable on the inmate's claims of termination from his job in retaliation for exercise of his First Amendment right in filing grievances, where they neither fired nor had the authority to fire the inmate from his job, despite the contention that they instigated the firing. The inmate had alleged that the supervisor and foreman harassed him by fabricating an allegation against him because he refused to participate in an alleged kickback scheme. The appeals court held that even if true, these allegations did not implicate the inmate's First Amendment rights. The court noted that all of the inmates who worked in the commissary were accused of attempting to make alcohol after rotting fruit was found in the refrigerator. (Federal Correctional Institution, Manchester, Kentucky)

U.S. District Court
RETALIATION

Trobaugh v. Hall, 176 F.3d 1087 (8th Cir. 1999). An inmate brought a § 1983 action against county officials alleging violation of his First Amendment right to petition for the redress of grievances was violated when he was placed in administrative segregation for filing repeated grievances. The district court entered summary judgment for the jail administrator and awarded \$1 nominal damages against the deputy. The inmate appealed and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that the district court abused its discretion by awarding only \$1 in compensatory damages, which was "patently insufficient" to compensate for the injury suffered by the inmate by being placed in segregation. The appeals court also held that the deputy who placed the inmate in segregation was potentially subject to punitive damages for his conduct. The inmate had filed a grievance to contest his transportation to court early and when it was denied he filed a second grievance which was also denied. The inmate filed a third grievance challenging the apparent lack of an appeal process, which was also denied. The day after his third grievance was denied he was awakened at 12:30 a.m. and was escorted to an isolation cell. (Linn County Correctional Center, Iowa)

2000

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

A.N.R. Ex Rel. Reed v. Caldwell, 111 F.Supp.2d 1294 (M.D.Ala. 2000). A 16-year-old detainee at a county jail sued the sheriff alleging inadequate provision of educational programs. The district court dismissed the case, finding that the detainee failed to comply with the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Tallapoosa County Jail, Alabama)

U.S. District Court
RIGHT OF ACCESS

Ashann-Ra v. Com. Of Virginia, 112 F.Supp.2d 559 (W.D.Va. 2000). A prisoner sued state officials alleging various constitutional violations. The court held that the prisoner's claim that correctional officers failed to provide him with well-fitted shoes for 24 days did not state an Eighth Amendment claim, where he did not allege that he suffered any serious physical injury to his feet or any other part of his body. The court found that the prisoner's claim that correctional officials misapplied grievance procedures by refusing to accept grievances about a grooming policy that had not yet been enforced, failed to state a deprivation of any constitutionally protected rights. According to the court, an institution's failure to comply with state grievance procedures does not compromise an inmate's right of access to courts because state grievance procedures are separate and distinct from state and federal legal procedures. (Red Onion State Prison, Virginia)

U.S. District Court
RIGHT OF ACCESS

Blagman v. White, 112 F.Supp.2d 534 (E.D.Va. 2000). A Muslim inmate who was participating in a boot camp program brought a civil rights action alleging denial of equal protection, violation of his free exercise rights, and intimidation. The district court granted summary judgment in favor of the defendants. The district court held that the defendants did not deny equal protection by treating Muslims less favorably than Christian inmates, where the Muslim inmates were given new space after the inmate complained, and officials made an exception to the camp schedule to permit weekly Islamic study sessions. The court noted that while Christian inmates are permitted to celebrate Thanksgiving and Christmas, certain aspects of Ramadan were irreconcilably inconsistent with the structure and regimen of the boot camp program. The court held that the Equal Protection Clause does not require prisons to ensure that their libraries adhere to numerical parity in books that are congenial to various religions. According to the court, the inmate had no constitutional entitlement to grievance procedures that had been voluntarily established by the state, and therefore the alleged efforts of prison officials to intimidate the inmate from filing grievances did not violate the inmate's constitutional rights. (Stafford County Detention Center, Virginia)

U.S. Appeals Court
EXHAUSTION

Booth v. Churner, 206 F.3d 289 (3rd Cir. 2000). A prisoner brought a § 1983 action alleging excessive use of force by prison officers and the district court dismissed the action for failure to exhaust administrative remedies. The appeals court affirmed, finding that the prisoner was required to exhaust the administrative remedies available to him even though the state's inmate grievance process could not provide him with the money damages he sought. (State Correctional Institute at Smithfield, Pennsylvania)

U.S. District Court
RETALIATION

Bowman v. City of Middletown, 91 F.Supp.2d 644 (S.D.N.Y. 2000). An arrestee who was held for 19 days on suspicion of murder brought a § 1983 action alleging false arrest, malicious prosecution and civil rights violations while confined. The district court held that denial of commissary privileges for five days was not a due process violation, especially since the only deprivation suffered was the inability to order cigarettes, which was the sole item the detainee desired from the commissary. The court found that the jail superintendent was entitled to qualified immunity from liability for his decision to have the pretrial detainee shackled when outside of his cell based

on the wording of the note that the detainee had sent to the superintendent complaining of his loss of commissary privileges, because the right to complain to prison administrators was not clearly established. The note asked "[who] do you think you are" and promised "I will see you or whomever in court." (Orange County Jail, New York)

U.S. Appeals Court
RETALIATION

Johnson v. Stovall, 233 F.3d 486 (7th Cir. 2000). A state prisoner filed a pro se § 1983 action alleging that prison employees violated his Eighth and Fourteenth Amendment rights and that a prison nurse retaliated against him for his filing of a grievance against her. The district court dismissed the complaint but the appeals court reversed and remanded the case, finding that the retaliation claim could not be dismissed as frivolous. The appeals court found that the prisoner's allegations permitted the inference that the nurse filed false disciplinary charges against him in retaliation for his action of filing a grievance against her. (Stateville Correctional Center, Illinois)

U.S. District Court
DUE PROCESS

Verser v. Elyea, 113 F.Supp.2d 1211 (N.D.Ill. 2000). A prisoner brought a § 1983 action against a prison's current and former medical directors and other officials, alleging that he was denied proper medical attention for an injury. The district denied the defendants' motion to dismiss, finding that the medical director's alleged conduct in declining to follow the recommendations of an orthopedic specialist, without even examining the prisoner and despite the prisoner's repeatedly complaints of pain and injury, rose to the level of deliberate indifference. The inmate injured his knee while playing basketball and an orthopedic specialist ordered physical therapy three times a week and instructed the prisoner to wear a knee brace. The former medical director of the prison denied the knee brace, stating that it was "not indicated for this problem." The prisoner was unable to participate in most of his physical therapy sessions due to the refusal of correctional officers and others to give him passes. When he was again examined by the orthopedic specialist and ordered to have more physical therapy and to wear an ace bandage, the medical director again contravened the recommendations, even though he had never examined the prisoner himself. Several weeks later the prisoner fell down a flight of stairs and injured his back, attributing the fall to his weak knee. The court found that the prison's chief administrative officer and the director of the state corrections department were not entitled to qualified immunity because they concurred in the denial of the prisoner's medical grievance appeal. In its decision the court stated that "...a plaintiff need not use magic words like 'reckless' or 'intentional' to make out a case for deliberate indifference. He must merely plead that the defendant behaved in a way that can be construed to show reckless or intentional conduct." (Stateville Correctional Center, Illinois)

2001

U.S. Supreme Court
EXHAUSTION
MONETARY DAMAGES

Booth v. Churner, 121 S.Ct. 1819 (2001). A state prison inmate who claimed that correctional officers assaulted him and then denied him adequate medical care for resulting injuries filed a civil rights action, seeking both injunctive relief and money damages. He had pursued an administrative grievance, but he did not seek an administrative review after prison officials denied relief. Money damages were not available through the administrative process. The federal appeals court upheld the dismissal of the inmate's civil rights lawsuit, for failure to pursue the administrative appeal under the Prison Litigation Reform Act (PLRA). The U.S. Supreme Court unanimously held that prisoners must seek administrative appeal, even if they are seeking only money damages as remedies, and despite the fact that money damages may not be available in an administrative grievance procedure. The Court held that Congress intended to require procedural exhaustion of available administrative remedies "regardless of the relief offered through administrative remedies." (Pennsylvania Department of Corrections)

U.S. Appeals Court
DISCIPLINE

Broussard v. Johnson, 253 F.3d 874 (5th Cir. 2001). A state prisoner applied for a writ of habeas corpus challenging a prison disciplinary conviction on due process grounds. The district court granted the petition conditionally, and the appeals court affirmed. The appeals court held that the prison disciplinary board violated the prisoner's right to due process by considering a confidential informant's tip as probative evidence, where the officer who testified concerning the tip had no knowledge of the confidential informant's identity or any facts supporting his reliability. The appeals court also found that the fact that bolt cutters were found in an area in which the prisoner worked, but to which approximately one hundred inmates had access, was insufficient to satisfy the due process requirement of "some evidence" to support the prison disciplinary charge of possession of contraband intended for use in an escape. (Texas Department of Corrections, Institutional Division, Eastham Unit)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Curry v. Scott, 249 F.3d 493 (6th Cir. 2001). African-American inmates at a state prison sued corrections officers and supervisors under § 1983 alleging violation of their Eighth Amendment rights. Defendants' motions to dismiss and for summary judgment were granted in part by the district court and the inmates appealed. The appeals court affirmed in part, reversed in part and remanded. The inmates had alleged that a correctional officer assaulted them on two different occasions. The appeals court held that an issue of fact regarding whether the officer's supervisors actually knew he posed a substantial risk of serious harm to prison inmates precluded summary judgment for the supervisors. The court noted that the officer's employment record contained sufficient references to his propensity to discriminate against and abuse African-American prisoners to create an issue of fact. The court held that while the inmates exhausted their administrative remedies under the Prison Litigation Reform Act (PLRA) for the officer that allegedly assaulted them, they had not exhausted administrative remedies against an officer who witnessed an assault and allegedly failed to intervene. (Southern Ohio Correctional Facility)

- U.S. Appeals Court
RETALIATION
- Dawes v. Walker, 239 F.3d 489 (2nd Cir. 2001). A prisoner brought a federal civil rights action against correctional officers, alleging retaliation in violation of his First Amendment rights in response to his successful appeal of a disciplinary order issued by one officer, and his filing of a complaint against that officer. The district court dismissed the claims and the appeals court affirmed. The appeals court held that the officer's references to the prisoner as an "informant" and "rat" in conversations with other inmates were not sufficiently adverse actions to constitute retaliation. (Auburn Correctional Facility, New York)
- U.S. Appeals Court
SENTENCE REDUC-
TION
RELEASE DATE
- Diaz v. Kinkela, 253 F.3d 241 (6th Cir. 2001). A prisoner applied for habeas corpus relief, challenging his incarceration for the "bad time" portion of his sentence. The district court dismissed the application and the appeals court affirmed, finding that the application was moot because the prisoner had been released, and that the prisoner was not entitled to a sentence reduction. The prisoner's sentence had been extended in response to his bad behavior while confined, under the provisions of a state statute that was subsequently found to be unconstitutional. (Southern Ohio Correctional Facility)
- U.S. Appeals Court
RETALIATION
- Farver v. Schwartz, 255 F.3d 473 (8th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging that harassment from correctional officers prompted a urine test which resulted in his loss of good time credits, change of class, and relocation. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the inmate stated a claim under § 1983 with respect to allegedly false disciplinary charges and allegedly retaliatory relocation. The inmate had been relocated 250 miles from his home after he questioned an officer's right to deny him legal assistance. The inmate had previously filed a grievance against another officer that allegedly resulted in false disciplinary charges. (Cummins Unit, Arkansas Department of Correction)
- U.S. District Court
RETALIATION
- Gayle v. Lucas, 133 F.Supp.2d 266 (S.D.N.Y. 2001). A former prisoner brought a § 1983 action against state correctional officers, alleging they issued false and retaliatory misbehavior reports against him. The district court entered summary judgment for the defendants, finding that uncontradicted evidence indicated that the prisoner committed the offenses for which he had been disciplined. (Sing Sing Correctional Facility, New York)
- U.S. District Court
GOOD TIME
- Hinebaugh v. Wiley, 137 F.Supp.2d 69 (N.D.N.Y. 2001). A federal prisoner filed a habeas corpus petition seeking restoration of good time credits allegedly lost due to retaliatory filing of incident reports by prison personnel. The prisoner moved to have the officials compelled to undergo polygraph examinations and the defendants moved to dismiss. The district court denied both motions, finding that the matter was one in which the prisoner challenged both the fact and duration of his confinement, which could properly form the basis for a federal habeas corpus petition. (Federal Correctional Institution, Ray Brook, New York)
- U.S. Appeals Court
PROCEDURE
RETALIATION
- Smith v. Campbell, 250 F.3d 1032 (6th Cir. 2001). A prisoner brought a § 1983 action asserting a First Amendment retaliation claim against a prison counselor and another prison official. The district court dismissed portions of the case and granted summary judgment for the defendants on the remaining portions. The appeals court affirmed, finding that the prisoner's filing of grievances against prison officials on behalf of himself and others, in a manner that violated legitimate prison regulations and objectives in light of his aggressive attitudes and his attempts to intimidate staff members, was not a protected activity. The court also held that the prisoner failed to establish a causal connection between protected conduct and his transfer. (Northeast Correctional Complex, Tennessee)
- 2002
- U.S. District Court
RETALIATION
- Baskerville v. Blot, 224 F.Supp.2d 723 (S.D.N.Y. 2002). A state prisoner filed a § 1983 action alleging that corrections officers filed a frivolous misbehavior report against him in retaliation for his filing grievances and a lawsuit against the state. The prisoner also alleged that medical personnel failed to provide him with adequate care. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that fact issues as to whether an officer's assault on the prisoner was in retaliation precluded summary judgment. The court found that an officer's issuance of a false misbehavior report against the prisoner, a restraint order that resulted in his confinement in keeplock, denial of showers and telephone privileges, and use of restraints, established adverse acts necessary to support the prisoner's First Amendment claim of retaliation. (Elmira Correctional Facility, New York)
- U.S. Appeals Court
RETALIATION FOR
LEGAL ACTION
- Bell v. Johnson, 308 F.3d 594 (6th Cir. 2002). A former state inmate sued prison officers, alleging that they retaliated against him in violation of the First Amendment because he filed a civil rights lawsuit. The district court granted judgment as a matter of law in favor of the officers and the inmate appealed. The appeals court reversed and remanded, finding that the inmate engaged in protected conduct when he filed his initial complaint against the officers, and that the officers were not entitled to qualified immunity. The inmate alleged that the officers twice left his cell in disarray, confiscated his legal papers without returning them, and stole medical diet snacks that had been provided to alleviate his weight loss from AIDS. The inmate testified that he was afraid to leave his cell and worried that the officers were tampering with his food. (State Prison for Southern Michigan)

U.S. Appeals Court
EXHAUSTION

Brown v. Croak, 312 F.3d 109 (3rd Cir. 2002). A state prisoner who was assaulted by other inmates brought a pro se action against prison officials alleging failure to protect and retaliation. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded, finding that the inmate had not failed to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). The court held that although the prisoner did not attempt to file an administrative grievance for initial review, he alleged that he had asked to file a complaint and was told by prison officials that he had to wait until their investigation was complete. Several months later the prisoner had still not been told that the investigation was complete. The prisoner had been assaulted by other inmates who wanted to use the small single toilet that he was using in a cafeteria. The other inmates wanted to use the bathroom to smoke and the prisoner contended that the prison's failure to enforce its no-smoking policy caused his injuries. (State Correctional Institution, Houtzdale, Pennsylvania)

U.S. Appeals Court
RETALIATION

Brown v. Crowley, 312 F.3d 782 (6th Cir. 2002). A state prison inmate brought a § 1983 action against prison officials, alleging that his prison account had been overcharged and that officials had retaliated against him for complaining about the overcharges. The district court dismissed the charges and granted summary judgment for the officials on all claims. The appeals court vacated and remanded. The appeals court held the inmate stated a First Amendment retaliation claim when he alleged that he was charged with a major misconduct, even though he was already in administrative segregation. Although the prisoner was eventually found not guilty of the charge, the court held that the charge subjected the prisoner to a risk of significant additional sanctions. The prisoner had complained that his prison account was being overcharged or embezzled and he was charged with filing a false complaint, even though prison officials were aware of an accounting problem with the account and knew that the prisoner's complaint might be valid. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Concepcion v. Morton, 306 F.3d 1347 (3rd Cir. 2002). Prisoners brought an action alleging that corrections officials used excessive force in two separate incidents. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed, finding that the exhaustion requirement in the Prison Litigation Reform Act (PLRA) applied to the grievance procedure described in the inmate handbook, even though it had not been formally adopted by the state administrative agency and even though the effectiveness of the handbook's grievance procedure may have been unclear. (New Jersey State Prison)

U.S. District Court
EXHAUSTIONS
PLRA-Prison Litigation
Reform Act

Davis v. Milwaukee County, 225 F.Supp.2d 967 (E.D.Wis. 2002). A state prisoner filed a pro se § 1983 action claiming that his constitutional right of access to the courts was violated when he was a pretrial detainee at a county jail. The defendants moved for summary judgment and the district court granted the motion in part, and denied it in part. The district court held that the detainee's access to courts was impeded because the county sheriff and others interfered with the detainee's ability to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA). According to the court, the detainee was unable to learn about the newly-enacted PLRA due to the absence of any legal materials at the jail, and only learned of the Act's exhaustion requirements after he had been transferred from the jail, when it was too late. The court noted that even if the detainee had known about PLRA, the absence of materials at the jail about the grievance procedure itself would have prevented him from knowing how to fully exhaust. When the defendants' rejected the detainee's grievance they advised him that it was "not a grievable situation." Because the detainee had access to a court-appointed lawyer at all times during his case, the court held that alleged lack of legal materials at the jail did not hinder his defense. The court held that the detainee's claim that the defendants rejected his mail without notifying him was non-frivolous, as required to establish a claim that he had been denied access to courts. (Milwaukee County Jail, Wisconsin)

U.S. District Court
RETALIATION
PETITION

Farid v. Goord, 200 F.Supp.2d 220 (W.D.N.Y. 2002). An inmate brought a § 1983 action against correctional officers and prison officials, alleging free speech and procedural due process violations under the First and Fourteenth Amendments. The district court granted summary judgment, in part, for the defendants. The court held that the inmate, who had circulated a petition, engaged in protected conduct even though the prison had a grievance process that could have been used. The petition concerned allegations that an officer failed to allow inmates adequate time to finish their breakfast. The court noted that no regulation barring petitions was in effect at the time. The court denied summary judgment on the issue of whether the inmate's right to petition the government and right to free speech were violated by officers when they determined, independent of the facility's media review committee, that a copy of the petition the inmate had sent to the prison superintendent was unauthorized, and that two satirical articles written by the prisoner, one of which was published by local news media, were detrimental to the order of the facility. The court denied qualified immunity to officers on the inmate's retaliation claim, finding that the inmate's right not to suffer retaliation for engaging in protected First Amendment activities was clearly established at the time of the alleged retaliation. The inmate alleged that the officers retaliated with searches of his cell and work area, and with disciplinary charges for authoring and possessing certain articles. (Attica Correctional Facility, New York)

U.S. Appeals Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Ferrington v. Louisiana Dept. of Corrections, 315 F.3d 529 (5th Cir. 2002). A state prisoner brought a § 1983 action against a corrections department and its employees, alleging negligent and intentional violation of his Eighth Amendment right to medical treatment. The district court dismissed the case without prejudice for failure to exhaust state remedies and the prisoner appealed. The appeals court affirmed, finding that even though the state supreme court had found

the state's statutory prison grievance system to be unconstitutional in part, the system remained in force and the prisoner was required to exhaust his administrative remedies before filing suit under § 1983. The court also held that the prisoner's alleged blindness did not excuse him from the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Claiborne Parish Detention Center, Louisiana)

U.S. Appeals Court
RETALIATION

Gayle v. Gonyea, 313 F.3d 677 (2nd Cir. 2002). A prisoner sued prison officials under §1983 alleging that they filed a false misbehavior report and subjected him to solitary confinement for exercising his right to file grievances. The district court entered summary judgment in favor of the defendants. The prisoner appealed and the appeals court reversed and remanded. The appeals court held that the prisoner met his burden of showing that his conduct was constitutionally protected, and that summary judgment was precluded by fact issues as to whether retaliation was a substantial factor in the officials' decision to charge and punish the prisoner. The prisoner had filed a formal complaint complaining of an alleged incident in which a prison vehicle ran over another prisoner. (Bare Hill Correctional Facility, New York)

U.S. District Court
PROCEDURES

Hemphill v. New York, 198 F.Supp.2d 546 (S.D.N.Y. 2002). An inmate brought a § 1983 action alleging that prison staff used excessive force against him. The district court dismissed the action, finding that the inmate had failed to satisfy the exhaustion requirement of the Prison Litigation Reform Act (PLRA). According to the court, a letter the inmate sent to a prison superintendent could not be deemed a "grievance" for PLRA purposes. The court noted that the state corrections department had a well documented grievance procedure that consisted of three levels: filing a complaint with the Inmate Grievance Review Committee, appeal to the facility superintendent, and appeal to a Central Office Review Committee. (Green Haven Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

In Re Bayside Prison Litigation, 190 F.Supp.2d 755 (D.N.J. 2002). State prison inmates brought a § 1983 action against prison officials alleging numerous alleged constitutional violations. The district denied the defendants' motion to dismiss as it pertained to those inmates who alleged that the § 1983 actions were racially motivated, and noted that there was no available remedy for the inmates to exhaust before filing suit. According to the court, the grievance procedures described in the state prison's inmate handbook were not sufficiently clear, expeditious, or respected by prison officials to constitute an "available administrative remedy" for the purposes of the requirements of the Prison Litigation Reform Act (PLRA). Noting frustration with the litigation, which "is, incredibly, still in its initial phases almost four-and-a-half years after the first complaint was filed," the court addressed "this latest, and presumably last Motion to Dismiss." The plaintiffs, hundreds of inmates at a state correctional facility, alleged that following a fatal stabbing of a corrections officer, a lockdown was ordered, during which they suffered "a panoply of injuries at the hands of the Defendants." (Bayside State Correctional Facility, New Jersey)

U.S. District Court
RETALIATION
TRANSFER

Ligon v. Doherty, 208 F.Supp.2d 384 (E.D.N.Y. 2002). A former county jail inmate brought a civil rights action against corrections officers who allegedly assaulted him. The district court denied the defendants' motion to dismiss, finding that the former inmate had not failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The court held that the transfer of the prisoner from the county jail where the assault allegedly occurred, to a state prison, deprived the former inmate of the opportunity to file a grievance. (Suffolk County Jail, New York)

U.S. Appeals Court
DUE PROCESS

Lomholt v. Holder, 287 F.3d 683 (8th Cir. 2002). A prisoner appealed the district court's dismissal of his § 1983 action against prison officials. The appeals court affirmed in part and reversed in part. The appeals court held that allegations that the prisoner had been placed "in the hole" for religious fasting were sufficient to state a free exercise of religion claim under § 1983. The court found that the sore feet from which the prisoner suffered did not amount to a serious medical need. The court also held that the prisoner had no right to a particular prison job. The court upheld the dismissal of the prisoner's complaint concerning the handling of his grievances because the prisoner only alleged that officials had denied his grievances, not prohibited him from filing any grievances. (Iowa)

U.S. Appeals Court
RETALIATION

Morales v. Mackalm, 278 F.3d 126 (2nd Cir. 2002). An inmate brought a civil rights action against corrections personnel alleging they were deliberately indifferent to his serious medical needs, sexually assaulted him, discriminated against him on the basis of his race, and retaliated against him because he filed a grievance. The district court dismissed the case with prejudice and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate stated an actionable claim for retaliation based on officials' actions in transferring him to a psychiatric center shortly after he filed a grievance. The appeals court found that the allegation that a prison employee called the inmate a "stoolie" in front of other inmates did not satisfy the adverse action requirement of the inmate's claim of retaliation. (Woodburne Corr'l Facility, Marcy Correctional Facility, Sullivan Correctional Facility, New York)

U.S. Supreme Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Porter v. Nussle, 534 U.S. 516 (2002). In a unanimous decision, the U.S. Supreme Court ruled that the "exhaustion of remedies" requirement of Prison Litigation Reform Act (PLRA) applies to all lawsuits by inmates about prison life, including those involving particular incidents such as an allegation of excessive use of force by a correctional officer, as well as those that involve general circumstances or conditions. The Supreme Court decision resolved a prior conflict among the U.S. appeals courts as to whether or not the "exhaustion of remedies" requirement of PLRA applies to a prisoner's lawsuit over a single incident, such as an alleged assault by a correctional officer. At

issue was the meaning of the phrase "prison conditions" in the PLRA statute. PLRA mandates that a prisoner must exhaust available administrative remedies, such as an internal prison grievance procedure, before pursuing a § 1983 lawsuit "with respect to prison conditions." A state prisoner in Connecticut brought a lawsuit in federal court against the state Department of Correction, asserting that corrections officers had subjected him to a sustained pattern of harassment and intimidation and had singled him out for a severe beating in violation of the Eighth Amendment prohibition on cruel and unusual punishment. The U.S. Court of Appeals for the Second Circuit overturned the district court's dismissal of the lawsuit based on the plaintiff inmate's failure to exhaust available administrative remedies before bringing suit. The U.S. Supreme Court reversed the appeals court, finding that PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or "some other wrong." (Connecticut)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Ray v. Kertes, 285 F.3d 287 (3rd Cir. 2002). A former state inmate brought a § 1983 action against prison officials alleging that he was assaulted by corrections officers and that they retaliated against him. The district court dismissed the complaint for failure to exhaust administrative remedies. The appeals court reversed, finding that while failure to exhaust administrative remedies is an affirmative defense that may be pleaded by the defendant, the district court could not dismiss the action for failure to exhaust administrative remedies and the inmate was not required to demonstrate compliance with the Prison Litigation Reform Act (PLRA) administrative exhaustion requirement. The inmate alleged he was assaulted twice by officers who then filed groundless misconduct charges against him when he threatened to sue. The inmate claimed that he filed various grievances with respect to the claims. (Pennsylvania State Correctional Institution at Huntingdon)

U.S. District Court
RETALIATION

Toolasprashad v. Bureau of Prisons, 286 F.3d 576 (D.C. Cir. 2002). A prisoner who was allegedly transferred and reclassified as a "special offender" in retaliation for exercising his First Amendment rights, brought a pro se action for violation of the Privacy Act. The district court dismissed the case and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner adequately alleged the first three elements of a Privacy Act claim for damages: inaccurate records, agency intent, and proximate causation. The inmate alleged that he was transferred in retaliation for filing grievances. (Federal Corr'l Institutions in Allenwood, Penn., and Marianna, Florida)

U.S. Appeals Court
RETALIATION

Walker v. Thompson, 288 F.3d 1005 (7th Cir. 2002). A state prisoner brought a § 1983 action against a former state governor and other officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the claim that the defendants conspired against him and other prisoners to keep them in prison beyond their mandatory release dates was properly asserted under the federal habeas corpus statute, but that the prisoner sufficiently stated a § 1983 claim with his allegations that the defendants retaliated against him for using the prison law library by refusing to let him exercise outside of his cell. (Wisconsin)

2003

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Baker v. Krieger, 287 F.Supp.2d 207 (W.D.N.Y. 2003). A state prison inmate brought a § 1983 action against a prison drill instructor, alleging use of excessive force in violation of the Eighth Amendment. The district court granted summary judgment in favor of the instructor. The district court held that the inmate's belief that his efforts to use the grievance process would be futile, based on his previous experience with filing an administrative grievance, did not excuse his failure to exhaust his administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA). (Lakeview Correctional Facility, New York)

U.S. District Court
RETALIATION

Baltoski v. Pretorius, 291 F.Supp.2d 807 (N.D.Ind. 2003). A Muslim prisoner brought a § 1983 action alleging violations of his First Amendment rights. The district court held that the prisoner stated a retaliation claim against a corrections officer by alleging that the officer searched his cell three times a week and confiscated the prisoner's prayer musk oil from his cell. The court also found that the inmate stated a First Amendment free exercise of religion claim with his allegations that the prayer musk oil was confiscated from his cell, even though the prison chaplain had approved his possession of the oil. (Miami Correctional Facility, Indiana)

U.S. Appeals Court
RETALIATION

Bruce v. Ylst, 351 F.3d 1283 (9th Cir. 2003). A state prison inmate brought a § 1983 action against prison officials, alleging that they validated him as a prison gang affiliate in retaliation for his jail house lawyering activities and his filing of prison grievances. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that fact issues as to whether the officials abused the prison gang validation procedure as a cover or ruse to silence and punish the inmate, barred summary judgment on his First Amendment retaliation claim. (Salinas Valley State Prison, California)

U.S. District Court
RETALIATION

Hale v. Scott, 252 F.Supp.2d 728 (C.D.Ill. 2003). A state inmate filed a § 1983 action alleging retaliation for exercise of his First Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the inmate's discipline, that resulted from stating in a grievance form that a female correctional officer was rumored to be having sex with male officers, did not violate the inmate's First Amendment rights, where the statement

clearly insinuated that the rumor was true, the inmate had no evidence as to the truth of the rumor, and the grievance spawned an investigation that held the officer up to ridicule and a loss of respect of authority. (Lincoln Correctional Center, Illinois)

U.S. District Court
RETALIATION

Koger v. Snyder, 252 F.Supp.2d 723 (C.D.Ill. 2003). A state prisoner brought an action alleging violation of his rights in connection with the search and seizure of various documents in his cell, and his subsequent transfer to a different prison. The district court held that the search of the prisoner's cell and the seizure of documents did not violate the Fourth Amendment, where the search was undertaken when homemade weapons were found in another nearby cell, and other cells in the same area of the prison were searched. (Danville Correctional Center, Illinois)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Lane v. Doan, 287 F.Supp.2d 210 (W.D.N.Y. 2003). A state prisoner brought a § 1983 action alleging various violations of his constitutional rights. The district court denied summary judgment for the defendants. The court held that the prisoner could proceed with his claim despite non-exhaustion of administrative remedies, where he was led by prison officials to believe that the alleged incident was not a grievance matter and he was assured that his claims were being investigated. (Elmira Correctional Facility, New York)

U.S. Appeals Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Mitchell v. Horn, 318 F.3d 523 (3rd Cir. 2003). A state prisoner brought a pro se § 1983 action against a corrections officer and other prison officials, alleging that the officer planted contraband near his locker in retaliation for complaints he filed against the officer, and that he was denied a fair hearing on the contraband charge. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the prisoner lacked available remedies for meeting the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) because prison officials refused to provide him with the necessary grievance forms. The appeals court found that the prisoner stated a claim for retaliation under the First Amendment. (Graterford Correctional Institution, Pennsylvania)

U.S. District Court
RETALIATION

Pate v. Peel, 256 F.Supp.2d 1326 (N.D.Fla. 2003). A state inmate brought an action against a prison nurse practitioner, alleging retaliation in violation of the First Amendment and deliberate indifference to his known serious medical conditions in violation of the Eighth Amendment. The district court granted summary judgment in favor of the nurse. The inmate had filed a grievance challenging denial of a medical pass for his bashful bladder syndrome (BBS). He had been cleared for arduous field force duty after having been assigned to a less demanding welding job, which the inmate alleged was an adverse action. The court held that the inmate failed to establish that his filing of a grievance was a substantial or motivating factor in the decision to transfer him to field force duty status. (Apalachee Correctional Institution, Florida)

U.S. District Court
EXHAUSTION

Santos v. Hauck, 242 F.Supp.2d 257 (W.D.N.Y. 2003). A state inmate brought a § 1983 action against correctional officers, alleging various violations of his constitutional rights. The district court granted summary judgment in favor of the officers. The court held that the inmate failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The court noted that although the inmate could choose not to appeal from an adverse administrative decision under state regulations, by doing so, the inmate forfeited his right to bring a § 1983 action in federal court. (Attica Correctional Facility, New York)

U.S. District Court
RETALIATION

Segreti v. Giller, 259 F.Supp.2d 733 (N.D.Ill. 2003). A former inmate brought a § 1983 claim against correctional officers seeking compensatory and punitive damages, based on an alleged retaliatory transfer. The district court denied the officers' motion to dismiss. The court held that the officers' alleged conduct supported the inmate's claim for retaliatory transfer, in response to filing a grievance against a corrections officer. The court found that the inmate had a statutory liberty interest in remaining in a work-release program, which could not be terminated without due process. (Transition Center, Illinois Department of Corrections)

U.S. District Court
PROCEDURES

Simpson v. Penobscot County Sheriff's Dept., 285 F.Supp.2d 75 (D.Me. 2003). A former county jail inmate brought a § 1983 action alleging violation of his right to privacy, his right to medical treatment, and his right to seek redress during his placement in administrative segregation. The district court granted summary judgment in favor of the defendants. The court held that the Due Process Clause did not afford a remedy under § 1983 for the alleged invasion of privacy of a county jail inmate who was placed in a cell that did not have a privacy partition next to the toilet. The court noted that jail officials did not know about the problem, and that once the inmate made them aware of it, they investigated and mitigated the problem by placing a removable piece of magnetic paper over the lower door window. The court found that the officials did not know about the problem until the inmate submitted a grievance in September 2002, although the inmate would have previously had access to the jail supervisors on their daily tours of the facility three times each day, providing him with 51 opportunities to raise the issue before he filed his grievance. (Penobscot County Jail, Maine)

U.S. Appeals Court
RETALIATION

Vance v. Barrett, 345 F.3d 1083 (9th Cir. 2003). Two state prisoners brought separate § 1983 actions, alleging that prison officials violated their constitutional rights by conditioning prison employment on the waiver of their property rights to money in their prison trust accounts, and retaliated against them for refusing to waive such rights. The district court dismissed the actions and prisoners appealed. The appeals court reversed and remanded. On remand, the suits were consolidated and the court granted summary judgment to the officials on the grounds of qualified immunity. The prisoners again appealed. The appeals court affirmed in part, reversed in part, and

remanded. The appeals court held that deductions taken from the prisoners' trust fund accounts for charges relating to costs incurred in creating and maintaining such accounts did not constitute a taking without just compensation, absent a showing that the charges were unreasonable or were unrelated to the administration of the accounts. (Nevada Department of Prisons)

2004

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Borges v. Piatkowski, 337 F.Supp.2d 424 (W.D.N.Y. 2004). A state prison inmate brought a § 1983 action against a prison dentist, alleging deliberate indifference to his serious medical needs. The district court denied the dentist's motion for summary judgment, finding that special circumstances justified any failure by the inmate to exhaust his administrative remedies. The court noted that the inmate did not know until after his transfer to a different facility, that the dentist might have known of the true nature of the inmate's medical condition and intentionally refused to treat that condition. By the time the inmate learned that he had a foreign object in his tooth socket and that the dentist might have known about it and done nothing to address it, the 14-day period for filing a grievance had passed. (Southport Correctional Facility, New York)

U.S. Appeals Court
PROCEDURES
PLRA-Prison Litigation
Reform Act

Carroll v. Yates, 362 F.3d 984 (7th Cir. 2004). A state prisoner brought a § 1983 Eighth Amendment action against corrections officials. The district court dismissed the action on the grounds of failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act. The inmate appealed. The appeals court reversed and remanded, finding that the prisoner did not fail to exhaust by failing to appear in person before a prison's review board, where the board did not have a rule requiring grievants to appear in person, and the inmate was allegedly not informed that the board wanted him to appear. (Illinois)

U.S. District Court
RETALIATION

Chavis v. Struebel, 317 F.Supp.2d 232 (W.D.N.Y. 2004). A former state inmate filed a § 1983 action claiming that prison officials confiscated his legal materials, retaliated against him for filing a grievance and filed a false schizophrenia report. The district court granted summary judgment in favor of the officials, finding that their filing of a disciplinary report against the inmate was not retaliatory. The court also held that an official's alleged suggestion that a mental health unit assess the inmate did not constitute an "adverse action" necessary to support the inmate's First Amendment retaliation claim, absent an allegation that the inmate was transferred to a psychiatric unit, subjected to psychiatric treatment against his will, subjected to a mental health evaluation, stigmatized as having a psychiatric illness, or ridiculed by other corrections officers or inmates as the result of the official's comments. (Attica Corr'l Facility, New York)

U.S. Appeals Court
RETALIATION

Hale v. Scott, 371 F.3d 917 (7th Cir. 2004). A state inmate filed a § 1983 action alleging retaliation for exercise of his First Amendment rights, for exercising his right of access to court, and for helping others exercise their right of access of courts. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the inmate's allegation in his grievance that a prison officer was rumored to have engaged in sexual misconduct with other officers was libelous and unprivileged. (Illinois)

U.S. District Court
PROCEDURES
PLRA-Prison Litigation
Reform Act

Jenkins v. Raub, 310 F.Supp.2d 502 (W.D.N.Y. 2004). A state prison inmate brought a pro se § 1983 action, alleging that he had been assaulted by correctional officers. The district court denied summary judgment for the officers, finding that the inmate had satisfied the Prison Litigation Reform Act's (PLRA) exhaustion requirement, even though he may not have technically exhausted the state's prescribed procedures. The court noted that the inmate had made both formal and informal attempts to register his grievance, and did not receive a formal response to his formal grievance until five months after it was filed, and had written additional letters to officials during that time. (Southport Correctional Facility, New York)

U.S. District Court
RETALIATION

Purkey v. CCA Detention Center, 339 F.Supp.2d 1145 (D.Kan. 2004). A federal prisoner brought a *Bivens* action against private prison employees. The district court denied the defendants' motion to dismiss. The district court held that employees at a private company under contract to house federal pretrial detainees were "federal actors" for the purposes of potential *Bivens* liability, since the detainees were in the custody of the United States Marshal and held under the authority of the United States pending disposition of federal charges against them. According to the court, the prisoner sufficiently stated that he was prejudiced by the employee's destruction of his legal papers, for the purpose of his claim under *Bivens* that he was denied access to court. The court also found that the prisoner stated a claim for violation of his free speech and association rights. The court noted that prisoners incarcerated at prisons under contract to the federal government enjoyed the same constitutional protections as those inmates incarcerated at prisons that are actually run by the federal government. The court held that the prisoner was prejudiced by the employee's destruction of his legal papers because the papers contained written recollections of police interrogations shortly after they were conducted and also recounted representations that were made to him to elicit his cooperation in return for a lighter sentence. The court found that the prisoner stated a *Bivens* claim by alleging that employees disciplined him because he assisted other inmates in the preparation of grievances against the prisoner. According to the prisoner, the prison did not provide a law library and an attorney employed by the prison to answer legal research requests refused requests for assistance in preparing legal actions against the prison and its personnel. The prisoner alleged that employees harassed and threatened him, placed him in segregation, entered his cell and scattered his papers and belongings, denied him visits with his wife, and confiscated his legal materials because he filed grievances. (Corrections Corporation of America, Leavenworth, Kansas)

- U.S. Appeals Court
RETALIATION
- Scott v. Churchill*, 377 F.3d 565 (6th Cir. 2004). A state prisoner brought a § 1983 action against prison employees, alleging retaliatory conduct in violation of his First Amendment rights. The prisoner had submitted a grievance against the guard. The district court granted summary judgment for a guard and the prisoner appealed. The appeals court reversed and remanded. The district court denied the guard qualified immunity on remand and he appealed. The appeals court held that the guard's filing of a major misconduct ticket against the prisoner, in retaliation for the prisoner's exercise of his First Amendment free speech rights, violated the prisoner's clearly established rights. (Carson City Regional Facility, Michigan Department of Corrections)
- U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
- Soto v. Belcher*, 339 F.Supp.2d 592 (S.D.N.Y. 2004). A former state prison inmate brought a § 1983 action against a corrections officer and prison officials, alleging retaliation and conspiracy in connection with his removal from his work assignment as a porter. The defendants moved for summary judgment on the grounds of failure to administratively exhaust claims, and the district court granted the motion. The district court held that the failure to exhaust administrative appeals in a grievance against a corrections officer was not excused by the inmate's transfer, nor was his failure to file an initial agreement against prison officials. (Green Haven Correctional Facility, New York)
- U.S. Appeals Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act
- Witzke v. Femal*, 376 F.3d 744 (7th Cir. 2004). A prisoner filed a pro se civil rights complaint alleging deliberate indifference to his medical needs. The district court dismissed the complaint for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner was entitled to the opportunity to demonstrate that administrative remedies were not available. The court also held that the halfway house in which the probationer was confined while undergoing an intensive rehabilitation program as an alternative to probation revocation, came within the definition of "any jail, prison, or other correctional facility" such that the alleged deprivations of the probationer's rights involved "prison conditions" within the PLRA exhaustion requirement. (Outagamie County Jail, and Moorings Program Halfway House, Wisconsin)
- 2005**
- U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION
- Braham v. Clancy*, 425 F.3d 177 (2nd Cir. 2005). A state prisoner brought a pro se § 1983 action against correctional officials alleging that they failed to protect him from an assault by another inmate. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded. The court held that remand to the district court was required to determine whether the prisoner's filing of three request forms for a change of cell, and his complaint about the prison officials' unresponsiveness to these forms, satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Corrigan Correctional Facility, Connecticut)
- U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION
- Boomer v. Deperio*, 405 F.Supp.2d 259 (W.D.N.Y. 2005). A state prison inmate brought a § 1983 Eighth Amendment action against physicians employed by a state corrections department, alleging deliberate indifference to the prisoner's diabetes. The district court granted summary judgment in favor of the defendants. The court held that the physicians were not deliberately indifferent, given evidence of prescribing insulin, adjustment of insulin levels, and supplying of self-monitoring instruments. The court noted that the inmate's failure to name all of the physicians involved in the alleged mistreatment in his administrative grievance did not automatically preclude naming previously unnamed physicians in his § 1983 suit. (Attica Correctional Facility, New York)
- U.S. Appeals Court
EXHAUSTION
PROCEDURES
- Cannon v. Washington*, 418 F.3d 714 (7th Cir. 2005). A state prisoner brought a federal civil rights and state law action challenging two incidents involving strip searches and alleged beatings. Default judgment was entered for one defendant and the remaining defendants were granted summary judgment. The prisoner appealed. The appeals court vacated and remanded in part, and affirmed in part. The court held that the prisoner failed to exhaust administrative procedures for the purposes of the Prison Litigation Reform Act (PLRA) when he ignored the proper format for seeking reconsideration of denial of a late claim. The court found that confiscation of the prisoner's legal papers did not excuse noncompliance with a grievance deadline. The court concluded that a grievance that was deposited in the prison mail system on the last day of the State's filing deadline, but which was returned for insufficient postage, was not timely filed under the prison mailbox rule because it was not re-mailed with sufficient postage until after the expiration of the filing period. (Centralia Correctional Center, Shawnee Correctional Center, Illinois)
- U.S. District Court
DUE PROCESS
- Davis v. Castleberry*, 364 F.Supp.2d 319 (W.D.N.Y. 2005). An inmate brought a civil rights action against a corrections officer who allegedly touched his penis during a pat frisk, and prison employees who investigated and denied his grievance. The district court granted summary judgment for the defendants. The court held that even assuming that the officer touched the

inmate's penis during a pat frisk performed before the inmate entered a prison exercise yard, the conduct did not violate the Eighth Amendment because it was proper for the officer to have conducted the search and such a search could involve the genital area. The court noted that inmate grievance procedures are not even constitutionally required, and therefore an inmate's mere disagreement with the outcome of his grievance will not give rise to a constitutional claim. (Southport Correctional Facility, New York)

U.S. District Court
PLRA-Prison Litigation
Reform Act

Gabby v. Meyer, 390 F.Supp.2d 801 (E.D.Wis. 2005). A state prisoner brought a § 1983 action alleging that medical personnel violated his Eighth Amendment rights by providing him with inadequate medical care. The district court denied the defendants' motion for summary judgment based on the prisoner's failure to exhaust available administrative remedies. The court held that the prisoner had no available administrative remedies to exhaust, within the meaning of the Prison Litigation Reform Act (PLRA). Soon after the prisoner filed an inmate grievance complaining that prison medical personnel had failed to remove stitches in his throat and neck, a doctor and nurse provided the prisoner with the relief he requested by removing the stitches and ultimately arranging for the prisoner's transportation to a hospital. This relief was provided after the prisoner's artery burst. The court noted that complaining about medical personnel's failure to transfer him to a hospital would not have supplied relief to the prisoner, where he had already incurred the harm that he alleged resulted from the delay. The inmate alleged that doctors and a prison nurse failed to arrange for him to be treated by specialists, and that he was eventually found to be suffering from throat cancer. (Dodge County Correctional Institution, Wisconsin)

U.S. District Court
RIGHT OF ACCESS

Gonzalez v. Narcato, 363 F.Supp.2d 486 (E.D.N.Y. 2005). An inmate brought a § 1983 action against prison officials, alleging violation of his First and Fourth Amendment rights. The district court granted summary judgment for the defendants. The court held that the prison officials' decision to prevent the inmate from attending a ceremony in the prison chapel conducted by a Catholic cardinal was reasonable and therefore did not violate the inmate's First Amendment rights to petition the government for redress of grievances. The court noted that the inmate had made hostile requests that the prison chaplain contact the cardinal to request his support in challenging his conviction, that the inmate told the chaplain he intended to attend the ceremony despite a prohibition and to confront the cardinal there, and a Catholic church official reported that the inmate had written belligerent letters to the cardinal. The court held that the officials' decision to place the inmate in a solitary housing unit for seven hours during the ceremony due to the security risk the inmate posed to the cardinal was reasonable and did not violate the inmate's due process rights. (Arthur Kill Correctional Facility, New York)

U.S. District Court
RETALIATION

Lashley v. Wakefield, 367 F.Supp.2d 461 (W.D.N.Y. 2005). A prison inmate sued officials claiming deprivation of his Eighth Amendment rights. The district court entered partial summary judgment in favor of the defendants. The court held that summary judgment was precluded by material issues of fact as to whether prison officers subjected the inmate to lockdown, frequent cell searches and other forms of discipline, in retaliation for his work as a prison library clerk and his filing of numerous grievances. The court noted that prison inmates are protected, under the Eighth Amendment, from cell searches that lack any legitimate penological interest and are solely intended to harass. The inmate had been assisting other inmates with legal research and writing in the prison library. (Five Points Correctional Facility, New York)

U.S. District Court
RETALIATION

Lindell v. Casperson, 360 F.Supp.2d 932 (W.D.Wis. 2005). An inmate brought an action against correctional officials and employees alleging violation of the First and Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that summary judgment was precluded by a genuine issue of material fact on the inmate's claim of retaliatory conduct against him for his complaint that an officer was sexually harassing him. (Waupun Correctional Institution, and Wisconsin Secure Program Facility)

U.S. District Court
RIGHT OF ACCESS
PLRA-Prison Litigation
Reform Act

Lopez v. Smiley, 375 F.Supp.2d 19 (D.Conn. 2005). A state inmate filed a § 1983 action alleging that one corrections officer assaulted him and that other officers failed to intervene. The district court denied the inmate's motion to modify his amended complaint, in part, and the inmate moved for reconsideration. The district court granted the motion. The court held that fact issues remained as to whether officials suppressed the inmate's grievance, and whether an officer had legal justification to hit the inmate. The court noted that deliberate obstruction of access to a prison grievance system, if proven, can be grounds to bar the enforcement of the exhaustion requirements of the Prison Litigation Reform Act (PLRA). (Northern Correctional Institution, Connecticut)

U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Lyons v. Trinity Services Group, Inc., 401 F.Supp.2d 1290 (S.D.Fla. 2005). A prisoner brought a pro se civil rights action under § 1983 against the corporation that ran the food service department and kitchen at a state prison, alleging that he was illegally terminated from his kitchen assignment due to his race and that he suffered retaliation for his complaints. The district court granted summary judgment for the defendants, finding that the prisoner failed to

exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), by failing to appeal his grievance to the highest level. (Everglades Correctional Institution, Florida)

U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Neese v. Arpaio, 397 F.Supp.2d 1178 (D.Ariz. 2005). An inmate filed a § 1983 action alleging that county jail officials violated his Eighth Amendment rights by serving him inadequate meals and spoiled food, and by subjecting him to overcrowding and unsanitary living conditions. The district court dismissed the complaint, finding that the action was barred by his failure to exhaust his administrative remedies. According to the court, the county jail inmate had administrative remedies available to him regarding his complaints, which he did not fully exhaust, despite the inmate's claim that a jail official refused to give him grievance forms. The court noted that the inmate had filed many grievances and his cellmates had filed grievances, and the inmate had not grieved any issue to the highest administrative level available to him. (Maricopa County Durango Jail, Arizona)

U.S. District Court
RIGHT OF ACCESS

Nelson v. Giurbino, 395 F.Supp.2d 946 (S.D.Cal. 2005). A state prisoner brought a pro se civil rights suit alleging that prison officials violated his First Amendment rights by denying him access to internet-generated materials and by denying his appeals regarding the alleged constitutional violations. The district court dismissed the action. The court held that the prisoner's claims for declaratory and injunctive relief were mooted by the issuance of a federal court's state-wide injunction against enforcement of the policy. The court granted qualified immunity from liability to the officials because the constitutional right to Internet-generated material was not clearly established at the time. The court held that the prisoner had no legal entitlement to a grievance procedure on which to state a constitutional claim based on administrative appeal. (Pelican Bay State Prison, California)

U.S. Appeals Court
RETALIATION

Rhodes v. Robinson, 408 F.3d 559 (9th Cir. 2005). A state prisoner brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment rights to file prison grievances. The district court dismissed the action for failure to state a claim and the prisoner appealed. The appeals court reversed and remanded. The court held that the fact that the prisoner undertook exhaustive efforts to remedy a myriad of alleged violations of his First Amendment rights did not demonstrate that his rights were not violated at all. The court noted that adoption of such a theory would subject prisoners to a "Catch 22" by establishing a rule that, by virtue of an inmate having fulfilled the requirements necessary to pursue a cause of action in federal court, he would be precluded from prosecuting the very claim he was forced to exhaust. According to the court, the prisoner presented the "very archetype of a cognizable First Amendment retaliation claim" in alleging that prison officials: (1) arbitrarily confiscated, withheld and eventually destroyed his property, threatened to transfer him to another facility, and ultimately assaulted him; (2) because he; (3) exercised his First Amendment rights to file prison grievances and otherwise seek access to the legal process, and that; (4) beyond imposing those tangible harms, the officers' actions chilled the prisoner's First Amendment rights; and (5) were not undertaken in narrowly tailored furtherance of legitimate penological purposes. The court noted that the prisoner's conflict with the officers "has its genesis in the most unlikely of places: the servicing of his Canon typewriter." (California Correctional Institution, Tehachapi, California)

U.S. District Court
RETALIATION

Rodriguez v. McClenning, 399 F.Supp.2d 228 (S.D.N.Y. 2005). A prisoner brought a civil rights action alleging that a corrections officer sexually assaulted him during a routine pat-frisk search and retaliated against him for filing a subsequent grievance. The district court denied summary judgment for the officer. The court held that officer's alleged sexual assault constituted cruel and unusual punishment and that the officer as not entitled to qualified immunity. The court held that the officer's alleged retaliatory planting of evidence and retaliatory filing of a misbehavior report was in violation of the First and Fourteenth Amendment. According to the court, the prisoner did not have any constitutional right to be free from cell searches of any kind, including retaliatory cell searches. The court found that the prisoner suffered punishment as the result of the officer's alleged retaliatory issuance of a misbehavior report, when he was placed in less desirable housing. (Green Haven Correctional Facility, New York)

U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Shaheed-Muhammad v. Dipaolo, 393 F.Supp.2d 80 (D.Mass. 2005). A prisoner brought a civil rights action against employees of a state corrections department alleging violation of his right to practice his Muslim religion. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the defendant failed to establish that the prisoner's religious beliefs were not sincerely held, noting that although the prisoner had a long history of pro se litigation, he might have been both litigious and religiously observant. According to the court, the fact that the prisoner first sought a pork-free diet and four months later sought a vegetarian diet could have suggested an evolution of his beliefs, and not "backsliding" or nonobservance of religious tenets. The court held that the prisoner's failure to file a grievance regarding the alleged confiscation of his religious medallion meant that his § 1983 claim concerning that incident was barred by the Prison Litigation Reform Act (PLRA). But the court found that the prisoner's letters to a Muslim prison chaplain and prison officials were

“grievances,” and therefore his § 1983 claim for denial of his request for a vegetarian diet was not barred by PLRA because the letters contained all of the information required by the relevant regulations. (Massachusetts Correctional Institution, Cedar Junction)

U.S. Appeals Court
RETALIATION

Siggers-El v. Barlow, 412 F.3d 693 (6th Cir. 2005). A state prisoner brought an action against a prison block officer, alleging that the officer transferred him to another prison in retaliation for exercising his First Amendment rights when he complained to the officer’s supervisors that the officer had failed to authorize disbursements of money from his prison account to pay his lawyer to review his appellate brief and file. The district court denied the officer’s motion for summary judgment and the officer appealed. The appeals court affirmed. The court held that the prisoner engaged in protected conduct when he informed the officer’s supervisor about the refusal to release funds, for the purposes of his First Amendment retaliation claim. The court found that the officer took an adverse action against the prisoner even though the officer’s action simply made the prisoner eligible for a routine transfer, and the violation involved a clearly established right of which a reasonable officer would have been aware. (Michigan Department of Corrections)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Westefer v. Snyder, 422 F.3d 570 (7th Cir. 2005). State prisoners brought a § 1983 action challenging their transfers to a higher-security prison. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoners’ suit challenging transfers to a high security prison was not subject to dismissal for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), where the transfer review process was not available to prisoners in disciplinary segregation, and the prisoners’ grievances were sufficient to alert the prison that the transfer decisions were being challenged. The court held that the alleged change in a prison policy that required transferring gang members to a high security facility did not constitute an ex post facto violation. (Tamms Correctional Center, Illinois)

U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Young v. Hightower, 395 F.Supp.2d 583 (E.D.Mich. 2005). A state prison inmate brought a pro se civil rights action against prison officials, alleging they were deliberately indifferent to his safety when they refused to buckle his seatbelt when he was transported in chains in a prison van and when the vehicle was then involved in a collision that resulted in injuries to the inmate. The district court held that the inmate had satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA) even though he did not return a document requested in response to his completed step III grievance form. The court found that prison policy did not require specific documents to be filed with the step III form and the request for documents suggested that the request was procedural rather than substantive. According to the court, when an inmate takes the prison grievance procedure to its last step, the PLRA exhaustion requirement has been satisfied if the state forgoes an opportunity to decide matters internally. (Chippewa Correctional Facility, Michigan)

2006

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act

Bell v. Konteh, 450 F.3d 651 (6th Cir. 2006). A state prison inmate brought pro se § 1983 action against a prison’s warden and correction officers, alleging they failed to protect him from violence by the other inmates in violation of the Eighth Amendment. The district court dismissed the action, citing the inmate’s failure to comply with the requirements of the Prison Litigation Reform Act (PLRA). The inmate appealed and the appeals court reversed. The appeals court held that the inmate had satisfied the adequate-control component of PLRA’s exhaustion requirement with respect to his claim against the warden, given the details contained in two grievances he filed against the warden. The inmate had filed a pair of grievances that, together, alleged that the warden had the inmate moved to a different unit for no justifiable reason, that both the inmate and his case manager had informed the warden that the inmate could be in danger if housed with the other prisoners in that unit, and that the inmate was subsequently attacked by two fellow prisoners in his cell while sleeping. (Trumbull Correctional Institution, Ohio)

U.S. District Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Campos v. Correction Officer Smith, 418 F.Supp.2d 277 (W.D.N.Y. 2006). A state inmate filed a § 1983 action alleging that correctional officers violated his constitutional rights by failing to protect him from an assault by a fellow inmate and used excessive force against him. The district court granted the officers’ motion for summary judgment. The court held that dismissal was an appropriate sanction for the inmate’s submission of a falsified document, and that the inmate failed to exhaust his administrative remedies. The inmate had submitted a document to support his claim that he had exhausted his administrative appeals and the court found it was falsified. The inmate contended that his failure to file a timely appeal of the denial of his grievance was due to prison officials’ interception of his outgoing mail. The court found that the inmate’s contention was supported only by an obviously sham, backdated letter, and was otherwise purely conclusory. According to the court, “The conclusion is inescapable, then, that plaintiff has knowingly submitted a falsified exhibit in an attempt to rebut defendants’ contention that he never appealed the ‘03 grievance.” (Attica Correctional Facility, New York)

U.S. District Court RETALIATION	<i>Carr v. Whittenburg</i> , 462 F.Supp.2d 925 (S.D.Ill. 2006). A state prisoner brought a § 1983 action against prison officials, alleging retaliation for filing a prison grievance regarding food handling by the security staff and the inmate cell house workers. The court held that genuine issues of material fact as to the intent and motive of the prison officials precluded summary judgment. The grievance alleged that the Unit Superintendent allowed his security staff and the inmate cell house workers to act as food handlers in the absence of required medical staff approval and appropriate sanitation apparel, in violation of Illinois Department of Corrections policies. (Menard Correctional Center, Illinois)
U.S. District Court RETALIATION	<i>Crenshaw v. Herbert</i> , 445 F.Supp.2d 301 (W.D.N.Y. 2006). A state inmate brought a § 1983 action alleging that corrections employees violated his First Amendment rights when they removed him from certain jobs, allegedly in retaliation for filing a grievance against a corrections officer with whom he had an altercation. The district court granted summary judgment for the defendants, finding that there was no evidence of a causal connection between the inmate's protected activity and the adverse actions. The court noted that the inmate was initially removed from his nurse's aide position because of his own fears for his safety there, and his removal from a laundry job was allegedly for poor performance. (Attica Correctional Facility, New York)
U.S. District Court RETALIATION	<i>Davies v. Valdes</i> , 462 F.Supp.2d 1084 (C.D.Cal. 2006). A state prisoner brought a pro se action against various corrections officials, alleging that they violated his due process rights in connection with disciplinary proceedings. The district court granted summary judgment in favor of the defendants. The court held that the issuance of a report that the prisoner possessed a weapon, and approval of the report during the administrative review, did not violate the prisoner's due process rights because they were supported by some evidence. The reporting prison official stated that he found a nail with black electrical tape wrapped around its handle end under the prisoner's locker, and that he found a pencil wrapped in electrical tape in the same manner. According to the court, the refusal to allow testimony at the disciplinary proceedings did not violate the prisoner's due process rights. Under the Due Process Clause, prison officials have the discretion, within reasonable limits, to refuse to call witnesses in a prison disciplinary hearing if their testimony would be unnecessary or irrelevant, or would impose hazards in the prison. The court found that the prisoner did not have a liberty interest in avoiding confinement in an administrative segregation unit (ASU) or special housing unit (SHU). The court concluded that the disciplinary proceedings against the prisoner were not in retaliation for his filing of a grievance, or for a grievance filed on behalf of other inmates in his role as an advisory committee representative, so as to violate his free speech rights. The prisoner asserted that officials planted a weapon on him. The prison officials were unaware of the prisoner's prior complaints until the prisoner filed suit. The court also held that requiring the prisoner to submit to a drug/urine test did not violate his right to privacy, where he was found in possession of a weapon, his bed was next to the bed of an inmate found with marijuana, and the prison had a legitimate interest in attempting to curb drug use. (California Rehabilitation Center)
U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act	<i>Dole v. Chandler</i> , 438 F.3d 804 (7th Cir. 2006). A prisoner brought a § 1983 action against correction officers, alleging he was beaten in retaliation for punching an assistant warden. The district court granted summary judgment in favor of the defendants on the ground that the prisoner failed to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner exhausted his administrative remedies, even though his grievance was lost and was not received by a board. The court noted that the exhaustion of administrative remedies is necessary under the Prison Litigation Reform Act (PLRA) even if the prisoner is requesting relief that the relevant administrative review board has no power to grant, such as monetary damages, or if the prisoner believes that exhaustion is futile. But the court found that prison officials may not take unfair advantage of the exhaustion requirement and that an administrative remedy becomes unavailable if prison employees do not respond to a properly filed grievance or otherwise use affirmative misconduct to prevent a prisoner from exhausting. (Menard Correctional Center, Illinois)
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act	<i>Flanyak v. Hopta</i> , 410 F.Supp.2d 394 (M.D.Penn. 2006). A state prison inmate filed a § 1983 Eighth Amendment action against the supervisor of the unit overseeing prison jobs and against the prison's health care administrator, alleging that he had been subjected to unsafe conditions while working as a welder. The inmate also alleged that the administrator had been deliberately indifferent to his medical needs arising from those conditions. The defendants moved for summary judgment and the district court granted the motion. The court held that the inmate's failure to exhaust the prison's three-step grievance procedure precluded his § 1983 action, regardless of the reasons given, including futility. The court noted that there is no futility exception to the Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement. (State Correctional Institution at Mahanoy, Pennsylvania)
U.S. District Court PLRA- Prison Litigation Reform Act	<i>Laird v. Mattox</i> , 430 F.Supp.2d 636 (E.D.Tex. 2006) An inmate filed a § 1983 suit complaining of alleged violations of his constitutional rights during his confinement. The district court dismissed the case <i>in toto</i> , finding that the inmate failed to exhaust administrative remedies as required

under the Prison Litigation Reform Act (PLRA). The court noted that completion of the exhaustion of administrative remedies process is a mandatory prerequisite for an inmate's filing of a § 1983 suit with respect to prison conditions, and that even complete exhaustion following the filing of the lawsuit is not sufficient. (Texas Department of Criminal Justice, Correctional Institutions Division, Gib Lewis Unit)

U.S. Appeals Court
RETALIATION

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the "pot room," which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. (Merrimack County House of Corrections, New Hampshire)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Roles v. Maddox, 439 F.3d 1016 (9th Cir. 2006). A prisoner brought a pro se § 1983 claim asserting violations of his First and Fourteenth Amendment rights in connection with the confiscation of magazines by prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the exhaustion requirement of the Prison Litigation Reform Act (PLRA) applied to prisoners who were held in private prisons, and the prisoner's claim that his constitutional rights were violated by the confiscation of his magazines was subject to the PLRA exhaustion requirement. (Idaho Correctional Center, operated by Corrections Corporation of America, Inc.)

U.S. Appeals Court
RETALIATION

Simpson v. Nickel, 450 F.3d 303 (7th Cir. 2006). A state inmate filed a § 1983 action alleging that prison officials retaliated against him for exercising his First Amendment rights. The inmate asserted that, after he wrote a letter and filed a suit complaining about abuse by the staff of the prison where he was confined, the targets of his accusations retaliated by issuing bogus conduct reports and arranging for him to be disciplined. The prisoner spent 300 days in segregation and lost 25 days of recreation privileges. The district court dismissed the complaint and the inmate appealed. The appeals court vacated and remanded. The court held: (1) the inmate was not required to establish or demonstrate in his complaint that the original speech was truthful where the complaint set out the inmate's grievance clearly enough to put officials on notice; (2) the inmate did not vouch for the correctness of the prison disciplinary board's findings against him because the board's report was included with his filing; and (3) the disciplinary board's finding

did not collaterally prevent the inmate from filing the § 1983 action. (Wisconsin)

2007

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act

Abdul-Muhammad v. Kempker, 486 F.3d 444 (8th Cir. 2007). State prisoners brought a § 1983 action against prison officials, challenging certain prison policies, and alleging that officials retaliated against them for filing an earlier lawsuit. The district court dismissed the complaint and the prisoners appealed. The appeals court affirmed. The United States Supreme Court vacated and remanded. On remand, the appeals court held that the district court could not dismiss the prisoner's claims without determining which of the prisoner's claims had been properly exhausted and which of the claims, if any, were meritorious. The court noted that if an inmate fails to exhaust one or more discrete claims raised in a § 1983 complaint, the Prison Litigation Reform Act (PLRA) requires only that the unexhausted claim or claims be dismissed, but does not require that the complaint be dismissed in its entirety. (Potosi Correctional Facility, Missouri)

U.S. District Court
RETALIATION
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that dismissal of the detainee's § 1983 claims of cruel and unusual punishment at the District of Columbia jail based on lack of reading material, lack of recreational equipment, failure of the commissary to stock items such as lotions, skin oils, hair oils, and peanut butter, the detainee's exposure to the stench created by regular sewage backups, as well as the jail's use of bunk beds without ladders was required under the Prison Litigation Reform Act (PLRA) because the detainee did not allege that he suffered any physical injury. Instead, the detainee alleged mental and emotional injuries. The court held that the provision of Prison Litigation Reform Act (PLRA) requiring exhaustion of administrative remedies before bringing a civil action against prison officials regarding prison conditions applied to the detainee who brought a § 1983 action before he was released from jail, even though the detainee had been released from jail by the time that the defendants brought their motion to dismiss. The court found that merely alleging that the lack of appropriate security at the District of Columbia jail created a risk of personal injury to detainees, without any allegation that the detainee reasonably feared an attack on his personal safety, failed to set forth sufficient facts to state a claim under § 1983 for cruel and unusual punishment. The court held that the detainee at the correctional treatment facility operated by the District's private contractor was not excused from the requirement, under Prison Litigation Reform Act (PLRA), of exhausting his administrative remedies before bringing a § 1983 action against the contractor's employee relating to denial of the detainee's requests for dental care, even if the detainee believed it would be futile to pursue the facility's grievance procedures. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
DUE PROCESS

Bumpus v. Canfield, 495 F.Supp.2d 316 (W.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that state prison officials and employees violated his Eighth Amendment rights in connection with his medical care and treatment. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison physician's delay of several days in dispensing the inmate's hypertension medication did not demonstrate deliberate indifference to the inmate's serious medical needs, where there was no evidence that the inmate experienced any complications during the time that he was waiting for his prescription to be refilled. The court found that the prison's nurse administrator was not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, even if she did not respond to the inmate's letters complaining about his perceived lack of medical attention, where the administrator was not personally involved in the inmate's medical treatment, and the inmate did not believe that the administrator was deliberately trying to hurt him. The court held that the prison officials' alleged refusal to process the inmate's grievance, or failure to see to it that grievances are properly processed, does not give rise to claim under § 1983. (Elmira Corr'l Facility, New York)

U.S. District Court
EXHAUSTION

Cameron v. Allen, 525 F.Supp.2d 1302 (M.D.Ala. 2007). A state inmate filed a § 1983 action against the commissioner of a state department of corrections, a contract medical care provider, and a prison physician challenging the constitutionality of medical treatment provided to him. The defendants moved for summary judgment. The district court granted the motion. The court held that the commissioner was not subject to liability under § 1983 for the prison medical staff's alleged deliberate indifference to the inmate's serious medical needs, where the commissioner did not personally participate in, or have any direct involvement with, the inmate's medical treatment, that medical personnel made all decisions relative to the course of treatment provided to the inmate, and such treatment did not result from a policy instituted by the commissioner. The court found that the inmate's failure to properly exhaust the prison's grievance procedure barred his § 1983 action. According to the court, even though the inmate filed grievance forms addressing his medical treatment, the treatment that was the subject of the forms was wholly unrelated to the medical treatment about which he complained in his § 1983 action. (Bullock County Correctional Facility, Alabama)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Carbe v. Lappin, 492 F.3d 325 (5th Cir. 2007). A federal prisoner filed a *Bivens* action against federal prison officials, alleging that he was subjected to unconstitutional conditions of confinement when officials ignored a mandatory evacuation order for a hurricane and abandoned him and other prisoners without adequate food, water, and ventilation. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The court held that the dismissal for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) was not proper, as the lack of exhaustion was an affirmative defense, the complaint was silent as to exhaustion, and the defendants had not yet filed a responsive pleading. (Federal Correctional Complex, Beaumont, Texas)

- U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
- Clarke v. Thornton*, 515 F.Supp.2d 435 (S.D.N.Y. 2007). An inmate appearing pro se brought a § 1983 action against a superintendent of a correctional facility and officers, alleging violations of her constitutional and statutory rights while she was incarcerated. The district court dismissed the action, finding that the inmate failed to exhaust her administrative remedies prior to bringing her action in federal court. The court noted that although the inmate satisfied the first two tiers of the administrative review process under New York law by filing a formal grievance and appealing to the relevant prison superintendent, the inmate did not complete the final step by appealing to the Central Office Review Committee (CORC). The court found that this resulted in failure to exhaust all administrative remedies pursuant to the Prison Litigation Reform Act (PLRA). (Taconic Corr'l Facility, New York)
- U.S. District Court
RETALIATION
- Daker v. Ferrero*, 506 F.Supp.2d 1295 (N.D.Ga. 2007). A former prison inmate brought a § 1983 action against corrections officials, challenging alleged denials of publications and mail, as well as alleged retaliatory acts by officials. The district court granted summary judgment as to certain claims and the officials moved for reconsideration as to a portion of that order and for summary judgment, and the inmate moved for summary judgment. The district court held that reconsideration of summary judgment was warranted by genuine issues of fact that existed as to whether prison officials violated the inmate's First Amendment rights by retaliating against him after he brought numerous grievances and a civil rights action. The court found that the officials were entitled to qualified immunity as to books containing sexually explicit materials, instructions on fighting techniques and military procedures and materials, criminal investigatory techniques, and instructions on building electronic devices, but issues of fact existed as to whether prison officials denied a book about revolution and four legal books based on their content. (Georgia Department of Corrections)
- U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
- Davis v. Williams*, 495 F.Supp.2d 453 (D.Del. 2007). An inmate brought a § 1983 action against a prison's medical services provider and staff, prison officials, and a fellow inmate. The court held that the inmate failed to state a § 1983 claim against the prison's medical services provider. The court noted that the provider was not mentioned at any time in the complaint or in any of the amendments, and there were no allegations against the provider to suggest that it, in any way, allegedly violated the inmate's constitutional rights. The court held that the inmate was not required to exhaust administrative remedies prior to bringing a § 1983 action against the state prison's medical staff, since, in response to a grievance filed by the inmate against the staff regarding "physical harm/conduct of officers," where the inmate received a memorandum from the inmate grievance chairperson informing him that the issue was "not grievable" because inmates could not request or demand disciplinary action on staff. The court noted that if prison authorities thwart an inmate's efforts to pursue a grievance, administrative remedies may be presumed exhausted for the purposes of the Prison Litigation Reform Act (PLRA), as no further remedies are available. (Delaware Correctional Center)
- U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION
PROCEDURES
- Fields v. Oklahoma State Penitentiary*, 511 F.3d 1109 (10th Cir. 2007). A state prisoner brought a pro se civil rights action under § 1983 against the Oklahoma State Penitentiary (OSP) and nine OSP employees, alleging claims for violations of various constitutional rights and other federal-law and state-law claims. The district court dismissed all the federal-law claims for failure to exhaust administrative remedies and then exercised its discretion to dismiss the state-law claims. The prisoner appealed. The appeals court affirmed. The appeals court held that the prisoner failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act (PLRA) before bringing suit and that the district court was within its discretion in denying the prisoner's motions to amend his complaint. The court noted that although the prisoner filed grievances with the Oklahoma Department of Correction (ODOC) he failed to comply with the required grievance procedures. (Oklahoma State Penitentiary)
- U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
- Goebert v. Lee County*, 510 F.3d 1312 (11th Cir. 2007). A pretrial detainee in a county jail, who had been pregnant during her detention and whose child had been stillborn, brought a § 1983 action against county and jail officials, a physician, and the jail's medical services provider, alleging deliberate indifference to her serious medical needs. The district court granted summary judgment for all defendants based on failure to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the jail's administrative appeal procedure for inmates was not "available" within the meaning of PLRA, where the detainee had no way of knowing about it. According to the court, the detainee adequately exhausted her available remedies under PLRA by filing a document titled "request form." The court noted that the handbook given to inmates did not mention a grievance form, but only spoke of a "written request," and the inmate checked the "complaint" box on the request form rather than the "request" box and cogently described her grievance. The court found that the detainee's amniotic fluid leak constituted a serious medical need and the facility commander exceeded gross negligence in answering the detainee's complaint about lack of treatment, supporting a deliberate indifference claim. The commander apparently held a general disbelief of inmates' medical complaints, and responded only with a statement that the detainee could visit an outside physician if she could pay for it. (Lee County Jail, Florida)
- U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
- Henderson v. Ayers*, 476 F.Supp.2d 1168 (C.D.Cal. 2007). An inmate brought a pro se and in forma pauperis suit under § 1983 against an acting warden, in his individual and official capacities, claiming that the warden had denied the inmate his right to attend Friday Islamic prayer services and seeking injunctive relief. The warden moved to dismiss. The district court denied the motion. The court held that the inmate satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA), even though he did not specifically name the warden in his grievance. The court noted that exhaustion under the Prison Litigation Reform Act (PLRA) is not necessarily inadequate simply because an individual later sued was not named in the grievances, but rather, compliance with prison grievance procedures is all that is required by the PLRA to properly exhaust. The court held that the inmate stated a claim for violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and stated a claim for violation of his First Amendment rights. The inmate alleged that he had been denied excused time-off work to attend Friday Islamic prayer services, as his religion required, and that he had been subjected to progressive discipline, including loss of privileges, for attempting to attend these prayer services. (California State Prison, Los Angeles County)

U.S. District Court EXHAUSTION PLRA-Prison Litigation Reform Act	<p><i>Johnson v. Tedford</i>, 616 F.Supp.2d 321 (N.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by verbally and physically assaulting him, and then denying him adequate medical care for the injuries he sustained in that assault. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate filed a medical care grievance that was not responded to, recorded, or assigned a grievance number. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who supervised the state corrections officers who allegedly assaulted the inmate also had supervisory authority over the nurse who treated the inmate. The inmate alleged that the sergeant was grossly negligent in supervising the nurse when she engaged in the examination of the inmate. (Clinton Correctional Facility, New York)</p>
U.S. Supreme Court PLRA- Prison Litigation Reform Act	<p><i>Jones v. Bock</i>, 127 S.Ct. (2007). State prison inmates brought separate § 1983 actions against corrections officials. The district courts dismissed the actions for failure to satisfy procedural rules, implementing the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The appeals courts affirmed the respective dismissals. Certiorari was granted, and the actions were consolidated. The U.S. Supreme Court reversed and remanded. The court held that an inmate's failure to exhaust under PLRA is an affirmative defense-- an inmate is not required to specially plead or demonstrate exhaustion in his complaint. According the court, the inmates' § 1983 actions were not automatically rendered noncompliant with PLRA exhaustion requirement by the fact that not all defendants named in the complaints had been named in previous administrative grievances. The court found that an inmate's compliance with the PLRA exhaustion requirement as to some, but not all, claims does not warrant dismissal of an entire action. (Michigan Department of Corrections)</p>
U.S. Appeals Court RETALIATION	<p><i>Lewis v. Jacks</i>, 486 F.3d 1025 (8th Cir. 2007). A state prisoner brought an action under § 1983 alleging discrimination and retaliation in his prison employment. The district court entered summary judgment for the defendants and the prisoner appealed. The appeals court affirmed. The court held that: (1) telling admittedly noisy inmates to "shut up" on one occasion did not violate the equal protection clause, even if equally noisy inmates of another race were not equally chastised; (2) the prisoner failed to present affirmative evidence that the garment factory supervisor's work assignments were motivated by race discrimination; (3) the supervisor's work assignments would not have chilled an inmate of ordinary firmness from filing grievances, as was required for a § 1983 retaliation claim; and (4) the prisoner's protected activity of filing a grievance was not causally connected to the alleged retaliation of an increased work load. (Maximum Security Unit, Arkansas Department of Corrections)</p>
U.S. Appeals Court EXHAUSTION MONETARY DAMAGES PLRA- Prison Litigation Reform Act	<p><i>Macias v. Zenk</i>, 495 F.3d 37 (2nd Cir. 2007). A federal prisoner brought a pro se suit against prison officials, alleging <i>Bivens</i> claims for indifference to his serious medical needs and tort claims under the Federal Tort Claims Act (FTCA). The district court dismissed the <i>Bivens</i> claims for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) and dismissed the tort claims without prejudice. The prisoner appealed. The appeals court affirmed in part and vacated in part. The court held that the unavailability of monetary damages in the prison grievance system did not excuse noncompliance with PLRA, and that the prisoner did not procedurally exhaust his remedies by bringing administrative tort claims and making informal complaints. But the court found that the alleged threats directed at the prisoner may have rendered administrative procedures unavailable, preventing the officials from raising non-exhaustion as defense. (Metropolitan Detention Center, Federal Bureau of Prisons, New York City)</p>
U.S. District Court EXHAUSTION	<p><i>Malik v. District of Columbia</i>, 512 F.Supp.2d 28 (D.D.C. 2007). An inmate sued the District of Columbia, a correctional services company retained by the District, and a transportation company claiming violations of the Eighth Amendment during a 40-hour bus ride transferring the inmate between two facilities. The defendants moved for summary judgment. The court held that the inmate failed to exhaust his administrative remedies as to the claims against the District and the correctional services company. On appeal (574 F.3d 781), the appeals court held that the prisoner did not have administrative remedies for the inmate to exhaust. The court ruled that genuine issues of material fact existed as to whether he exhausted any administrative remedies available to him under the transportation company's informal grievance policy, precluding summary judgment. (District of Columbia, Corrections Corporation of America, TransCor, CCA's Northeast Ohio Correctional Center, Youngstown, Ohio, and CCA Central Arizona Detention Center)</p>
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act	<p><i>Maraglia v. Maloney</i>, 499 F.Supp.2d 93 (D.Mass. 2007). A state prisoner brought a civil rights suit against several Massachusetts Department of Correction (DOC) prison security officers. The state moved to dismiss the claims for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), and the motion was converted into one for summary judgment. At a prior hearing, the court determined that the question of whether the prisoner exhausted remedies involved disputed issues of fact. The district court held that the issue of fact as to whether the prisoner exhausted remedies presented a question for the jury, not the court, to resolve. The court noted that evidence of the prisoner's failure to file another grievance, challenging the fact that he had not received responses to other allegedly filed grievances went to the issue of the prisoner's credibility regarding exhaustion. (Massachusetts)</p>
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act RETALIATION	<p><i>Monk v. Williams</i>, 516 F.Supp.2d 343 (D.Del.2007). An inmate brought an action against a warden and a prison administrator, alleging retaliation based upon his practice of religion. The district court granted summary judgment in favor of the defendants. The court held that the inmate's removal from a drug treatment program would not have deterred a person of ordinary firmness from exercising his right to practice religion. The inmate told responding officers that he had just finished praying and to let another inmate finish prayer, and thus his own religious conduct was not disturbed. Under the Prison Litigation Reform Act (PLRA), a prisoner must complete an administrative review process in accordance with applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court. The court held that the inmate failed to exhaust all administrative remedies before filing action</p>

because the inmate failed to appeal the prison administrator's denial of his grievance. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Murray v. Prison Health Services, 513 F.Supp.2d 9 (S.D.N.Y. 2007). A pro se prisoner brought a § 1983 action against prison health services, among others, alleging that a superintendent, nurse administrator and two nurses at the prison were deliberately indifferent to his medical needs and denied him daily medication for his HIV infection. The defendants moved to dismiss the complaint and the district court granted the motion. The court held that the prisoner's alleged actions, sending letters to the nurse administrator and superintendent, were not sufficient to satisfy the exhaustion requirement of the Prison Litigation Reform Act (PLRA). (Green Haven Correctional Facility, New York)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

O'Guinn v. Lovelock Correctional Center, 502 F.3d 1056 (9th Cir. 2007). A prisoner filed a pro se suit claiming prison officials denied him accommodation and treatment for mental illness, under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit pursuant to the Prison Litigation Reform Act (PLRA) and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's suit did not arise under § 1983 and that exhaustion is required under PLRA. The court found that the prisoner failed to exhaust administrative remedies. According to the court, the prisoner's filing of grievances requesting a lower bunk due to poor balance resulting from a brain injury were not equivalent to claims of denial of mental health treatment, and the prisoner's complaint to the United States Department of Justice (DOJ) did not exhaust the prison's internal grievance process. The court found that the DOJ's investigation of the prisoner's claims did not satisfy the exhaustion requirement as the investigation did not terminate the prisoner's rights to pursue ADA and Rehabilitation Act claims internally. (Lovelock Correctional Center, Nevada)

U.S. District Court
RETALIATION

Roman v. Donelli, 616 F.Supp.2d 299 (N.D.N.Y. 2007). A state prisoner, who suffered from Hepatitis C, brought a § 1983 action against the New York State Department of Correctional Services' (DOCS) chief medical officer, among others, alleging that the officer violated his constitutional rights under the First, Eighth, and Fourteenth Amendments. The officer moved for summary judgment and the district court granted the motion. The court held that the officer was not deliberately indifferent to the prisoner's medical needs and that the prisoner was not similarly situated to another prisoner who was allegedly treated for the same condition. According to the court, the officer's allegedly differentiated treatment of prisoners was not motivated by discriminatory animus, as would support an equal protection claim. The chief medical officer refused to implement a course of treatment that was not approved by Food and Drug Administration (FDA) for 22 months after the prisoner was treated ineffectively with a different drug combination. The court noted that the officer made decisions regarding the prisoner's treatment based on information before him at the time, and when the officer became aware of the circumstances that would warrant an exception to the prison policy prohibiting treatment with drugs that were not FDA approved, the officer approved treatment. The court found that the prisoner did not suffer any adverse action as a result of his filing of grievances, as would support a First Amendment retaliation claim. (New York State Department of Correctional Services)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Singh v. Goord, 520 F.Supp.2d 487 (S.D.N.Y. 2007). An inmate who professed a belief in the Sikh faith brought an action against various officials of the New York State Department of Correctional Services (DOCS) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause of the First Amendment, the New York State Constitution, and various other constitutional provisions. The DOCS moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate failed to exhaust administrative remedies, as required under the Prison Litigation Reform Act (PLRA), with respect to his free exercise clause claim regarding his right to wear a Kacchera, which was a religious undergarment. The court found that summary judgment for the defendants was precluded by an issue of fact as to whether the inmate received the decision of the Superintendent, but failed to appeal it. (Fishkill Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Smith v. Federal Bureau of Prisons, 517 F.Supp.2d 451 (D.D.C. 2007). A federal prisoner who had requested information from the Bureau of Prisons (BOP) several times under the Freedom of Information Act (FOIA) brought an action against the BOP, challenging the BOP's aggregation of the prisoner's FOIA requests and denial of his fee waiver request. The BOP brought a motion to dismiss or for summary judgment. The district court granted the motions. The court held that the prisoner was required to exhaust administrative remedies prior to seeking judicial review of BOP's aggregation of his FOIA requests, and that he was not entitled to a fee waiver. The court held that the prisoner was not entitled to a fee waiver for information he requested from the Bureau of Prisons (BOP) under the Freedom of Information Act (FOIA), where the prisoner did not specify the public interest that would allegedly be satisfied by disclosure of the requested information, identify the government activity or operation on which the prisoner intended to shed any light, or explain how disclosure would contribute to the public's understanding of such activity or operation, as required by Department of Justice (DOJ) procedures for disclosure of records under FOIA. (BOP FCI Gilmer, West Virginia)

U.S. District Court
EXHAUSTION

Sweet v. Wende Correctional Facility, 514 F.Supp.2d 411 (W.D.N.Y. 2007). A state inmate filed a civil rights suit against a prison, disciplinary hearing officer and others. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that the inmate did not exhaust his administrative remedies on his due process claim concerning an alleged refusal to call witnesses. The court found that any right the inmate had to have witnesses testify at a hearing was not violated when the witnesses refused to give testimony. According to the court, the lack of a transcript of a prison disciplinary hearing did not violate due process. (Wende Correctional Facility, New York)

U.S. District Court DUE PROCESS	<i>Warren v. Goord</i> , 476 F.Supp.2d 407 (S.D.N.Y. 2007). An inmate whose face was slashed by an unidentified assailant brought a pro se suit under § 1983 against corrections officials, claiming that their failure to install metal detectors at the entrance to a prison yard constituted an Eighth Amendment violation. The inmate sought damages and injunctive relief. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated an Eighth Amendment claim under § 1983 for failure to protect, where his allegations regarding the attack sufficiently pled that he was put at a substantial risk of serious harm, and the prison officials' alleged tolerance for weapons in the prison yard and resulting inmate attacks may have risen to the level of disregarding a substantial and pervasive risk of violence. The court found that the inmate failed to state a § 1983 claim against a prison official who was alleged only to have denied the inmate's grievance, where the inmate did not explain how the denial of a grievance violated his constitutional or federal rights. The court found that the inability of the inmate to identify the superintendent of security at a correctional facility was not fatal to his "John Doe" claim against the superintendent. The court declined to dismiss the claim until the inmate had had sufficient discovery to name the defendant. (Green Haven Correctional Facility, New York)
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act	<i>Wesolowski v. Sullivan</i> , 524 F.Supp.2d 251 (W.D.N.Y. 2007). An inmate in the custody of the New York State Department of Correctional Services (DOCS) brought a § 1983 action against DOCS employees alleging his constitutional rights were violated while he was confined at a correctional facility when employees confiscated fundraising materials. The employees moved for summary judgment. The district court granted the motion. The court held that the inmate failed to comply with the Prison Litigation Reform Act's exhaustion requirement by never appealing the denial of a grievance filed with the Inmate Grievance Resolution Committee (IGRC) to Central Office Review Committee (CORC). (New York State Department of Correctional Services)
U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act	<i>Williams v. Beard</i> , 482 F.3d 637 (3rd Cir. 2007). A state prisoner brought a § 1983 action against a prison's unit manager, alleging he violated the Eighth Amendment by failing to protect him from an attack by another prisoner. The district court granted summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's procedural default should have been excused. The court held that, although the prisoner procedurally defaulted his claim when he did not name the unit manager in his initial grievance that asked to be moved from his cell because he feared he would be hurt by his cellmate, the default should have been excused in his § 1983 action, because the unit manager responded to the grievance and acknowledged conversations the prisoner had with staff regarding his transfer request, but rejected the grievance as lacking merit. (Pennsylvania State Correctional Institution at Huntingdon)
U.S. District Court PLRA- Prison Litigation Reform Act EXHAUSTION	<i>Wilson v. Taylor</i> , 515 F.Supp.2d 469 (D.Del. 2007). Black inmates brought a suit against prison officials asserting an equal protection claim that they were consistently treated differently from similarly situated white inmates in job assignments, disciplinary actions and security classifications. One inmate also asserted a retaliation claim against a deputy warden. The district court granted summary judgment for the defendants and denied summary judgment for the plaintiffs. The court held that an inmate failed to establish an equal protection claim against a prison commissioner and warden, absent evidence of the involvement of the commissioner or warden in the alleged incidents of racial discrimination. The court found that an inmate did not establish an equal protection claim based on the allegation that he was not permitted to return to a particular prison building following an investigation while a similarly situated white inmate was permitted to return. According to the court, the exhaustion provision of the Prisoner Litigation Reform Act (PLRA) barred an inmate's claim that his transfer to another facility constituted retaliation for filing grievances and civil rights lawsuits. The inmate had written a letter to the warden's office contesting his transfer, but filed no grievances raising a retaliation claim or even his housing transfer generally. (Sussex Correctional Institution, Delaware)
2008	
U.S. District Court REMEDIES	<i>Alba v. Montford</i> , 517 F.3d 1249 (11th Cir. 2008). A federal prisoner incarcerated in a privately operated correctional facility brought a pro se § 1983 action against prison employees for allegedly acting with deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court interpreted the complaint as asserting a claim under <i>Bivens</i> and dismissed it for failure to state a claim because the prisoner had adequate state remedies available. The prisoner appealed. The appeals court affirmed. The court held that even assuming that the private prison was a government actor for the purposes of <i>Bivens</i> liability, alternative remedies existed by which the prisoner could recover from its employees. (McRae Correctional Facility, Corrections Corporation of America, Georgia)
U.S. Appeals Court RETALIATION	<i>Bibbs v. Early</i> , 541 F.3d 267 (5 th Cir. 2008). A state inmate brought a claim under § 1983 against corrections officers alleging that he was subjected to severe cold in retaliation for filing grievances. The district court granted the officers' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether subjecting the inmate to four straight nights of 20-degree temperatures was sufficiently severe to deter the inmate from filing future grievances. The court also found a genuine issue of material fact as to whether the inmate's actions of writing grievances against corrections officers caused the officers to retaliate by turning on "purge" fans, subjecting the inmate to cold temperatures. (Clements Unit, Amarillo, Texas)
U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act RETALIATION	<i>Bryant v. Rich</i> , 530 F.3d 1368 (11 th Cir. 2008). State inmates brought § 1983 suits against prison officials, claiming that they had been beaten. The district court dismissed the complaints without prejudice. The inmates appealed. The appeals court affirmed. The court held that the district judge properly acted as a fact finder in resolving, on motions to dismiss, a factual dispute as to whether an inmate had exhausted administrative remedies as required by PLRA. The court found that in dismissing a state inmate's § 1983 suit for failure to exhaust administrative remedies, the district court did not clearly err in finding that the inmate's allegation that he was denied access to

grievance forms at a prison was not credible, especially given the un rebutted evidence that he successfully filed a grievance there, although it was one for property loss. According to the court, a state inmate's untimely appeal of a warden's denial of his grievance did not satisfy the PLRA exhaustion requirement for him to pursue a § 1983 claim. The court found that, despite an inmate's contention that he failed to report an incident of prison abuse because he feared additional violent reprisals by prison officials, the inmate failed to exhaust his administrative remedies, as required by PLRA for him to pursue a § 1983 claim. The court noted that the inmate was later transferred to another prison where the threat of violence was removed and he could have filed an out-of-time grievance and then shown good cause for its untimeliness. (Rogers State Prison, Georgia)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Cohen v. Corrections Corp. of America, 588 F.3d 299 (6th Cir. 2008). A federal prisoner filed a pro se § 1983 action, claiming that a private prison and corrections personnel failed to accommodate the practice of his religion of Judaism by not providing kosher food. The district court dismissed the action for failure to exhaust under the Prison Litigation Reform Act (PLRA). The prisoner petitioned for a writ of certiorari. The United States Supreme Court granted certiorari, vacated the decision, and remanded based on intervening law. On remand, the prisoner filed a supplemental brief. The appeals court reversed and remanded, finding that PLRA did not require exhaustion prior to filing complaint. The court noted that a new decision by the U.S. Supreme Court held that under the Prison Litigation Reform Act, a prisoner is not required to specifically plead or demonstrate exhaustion in his complaint. The Court further held that "exhaustion is not per se inadequate simply because an individual later sued was not named in the grievance." The Supreme Court found that the appeals court imposition of the prerequisite to properly exhaust a claim prior to filing a complaint was "unwarranted." (Corrections Corporation of America, Northeast Ohio Correctional Center.)

U.S. Appeals Court
DUE PROCESS
EXHAUSTION

Davis v. Silva, 511 F.3d 1005 (9th Cir. 2008). A state prisoner brought a habeas petition challenging a prison disciplinary proceeding in which he was assessed a 150-day forfeiture of good-time credit. The district court dismissed the petition for failure to exhaust and the prisoner appealed. The appeals court reversed, finding that the prisoner provided the state court with sufficient facts to exhaust his state court remedies. The court noted that exhaustion under the Antiterrorism and Effective Death Penalty Act (AEDPA) requires that a habeas petitioner fairly present his federal claims to the highest state court available and the petitioner describes in the state proceedings both the operative facts and the federal legal theory on which his claim is based so that the state courts have a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. The court noted that exhaustion of state remedies under AEDPA does not require that a habeas petitioner present to the state courts every piece of evidence supporting his federal claims. According to the court the state prisoner's state habeas petition provided the state court with sufficient facts to address his claim that his due process right to call witnesses in a disciplinary proceeding was violated. The petition explicitly stated that the prisoner was denied his due process rights to a witness and made clear based on statute citations that the prisoner was charged with committing a battery upon someone who was not an inmate. The prisoner cited a statute governing denial and revocation of good-time credits, referred to a case holding that due process demands that an inmate be allowed to call witnesses in his defense in a disciplinary proceeding involving possible loss of good-time credits, and cited a regulation controlling disciplinary proceedings. (California Department of Corrections and Rehabilitation)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Ellis v. Vadlamudi, 568 F.Supp.2d 778 (E.D.Mich. 2008). A state prisoner brought a civil rights suit against prison medical personnel alleging due process and Eighth Amendment violations as the result of failure to treat his chronic pain from several diagnosed medical conditions. The defendants moved to dismiss for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). A magistrate filed a report and recommendation that the motion be denied and the defendants filed objections. The district court held that the continuing violations doctrine should be applied to repeated failure to treat chronic pain, such that instances predating and postdating a prison grievance were exhausted, even if discrete grievances were not filed for each denial of treatment within the time limits of the state prisoner's grievance system. (Mound Correctional Facility, Michigan Department of Corrections)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Fields v. Roswarski, 572 F.Supp.2d 1015 (N.D.Ind. 2008). A state inmate brought a § 1983 action against city police officers, alleging they used excessive force when arresting him, and against custody officers at a county jail, alleging they used excessive force by unnecessarily spraying the inmate with pepper spray for an unreasonable period of time. The district court granted summary judgment for the defendants, finding that the inmate failed to exhaust his administrative remedies. According to the court, the inmate failed to comply with the requirement, under the Prison Litigation Reform Act (PLRA), of exhausting his administrative remedies before bringing a § 1983 action, because after denial of his belated grievance, he failed to appeal from the denial of the grievance, and the jail's grievance policy would have allowed such an appeal. (Tippecanoe County Jail, Indiana)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Gillet v. Anderson, 577 F.Supp.2d 828 (W.D.La. 2008). A pro se prisoner brought a § 1983 action against prison officials, alleging violation of his right to free exercise of his religion. The district court granted summary judgment for the officials, finding that the prisoner failed to meet the Prison Litigation Reform Act (PLRA) exhaustion requirement. The court noted that the prisoner did not file a request for a review of the initial denial of his administrative request for the religious materials until the day after he filed his complaint, and the final administrative determination denying the prisoner's request was not rendered until more than 30 days after the prisoner filed his suit. (David Wade Correctional Center, Louisiana)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Grinter v. Knight, 532 F.3d 567 (6th Cir. 2008). A state prisoner, proceeding pro se, brought §§ 1981 and 1983 actions against prison officials, alleging violations of his right to due process, right to equal protection, and Eighth Amendment rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the prisoner had no due process liberty interest in freedom from use of four-point restraints or in having a prison nurse arrive before corrections officers placed the prisoner in the

restraints. According to the court, such restraints were expected adverse consequences of confinement, the prisoner had been accused of hitting a corrections officer, and officers entered the prisoner's cell to conduct an investigation. The court found that prison officials' alleged failure to follow procedure at disciplinary proceedings and provide the prisoner with a medical report, question witnesses, and make another witness available for questioning did not violate the prisoner's due process liberty interest. According to the court, failing to follow proper procedures is insufficient to establish an infringement of a liberty interest, where the process is not an end in itself, but rather its constitutional purpose is to protect a substantive interest. The court found that the prisoner's Eighth Amendment § 1983 claims for excessive force and equal protection race discrimination could not be dismissed under the Prison Litigation Reform Act (PLRA) at the screening stage for failure to exhaust administrative remedies. According to the court, if a prisoner's complaint contains claims that are administratively exhausted and claims that are not exhausted, the district court should proceed with the exhausted claims while dismissing the claims that are not exhausted and should not dismiss the complaint in its entirety. (Kentucky State Penitentiary)

U.S. Appeals Court
RETALIATION

Hannon v. Beard, 524 F.3d 275 (1st Cir. 2008). A prisoner who was formerly incarcerated in Pennsylvania and transferred to Massachusetts brought an action against the Secretary of the Pennsylvania Department of Corrections, alleging that he was transferred out-of-state in retaliation for prior lawsuits. The previous lawsuits were against a Pennsylvania prison librarian, who allegedly denied his requests for legal materials, and against numerous Massachusetts prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings regarding the Secretary of the Department of Corrections. The court held that the conduct by the Secretary of the Pennsylvania Department of Corrections, in authorizing, directing, and arranging the Pennsylvania prisoner's transfer from a Pennsylvania prison to a Massachusetts prison, pursuant to an Interstate Corrections Compact, was sufficient to constitute the "transaction of business" in Massachusetts, as would support the exercise of personal jurisdiction by the district court. The court found that the prison librarian's conduct in responding to requests for legal materials by the prisoner incarcerated in Massachusetts was insufficient to constitute the "transaction of business" in Massachusetts, within the meaning of the Massachusetts long-arm statute. The court noted that the prisoner "...has been the quintessential 'jailhouse lawyer,' pursuing post-conviction relief and filing numerous grievances and lawsuits on behalf of himself and other prisoners challenging their conditions of confinement." The prisoner estimated that he had represented "thousands" of his fellow inmates in proceedings. He alleged that the Pennsylvania DOC grew tired of his lawsuits and agitation and, in order to prevent him from filing more lawsuits and in retaliation for the actions he had already taken, began a strategy of transferring him to out-of-state prisons. (Pennsylvania Department of Corrections, Massachusetts Department of Corrections)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Jensen v. Knowles, 621 F.Supp.2d 921 (E.D.Cal. 2008). A state prisoner brought a pro se § 1983 action against prison officials, claiming deprivation of his Eighth Amendment rights by allegedly denying the prisoner a medically necessary diabetic diet and forcing him to reside in a cell with a prisoner who smoked, and deprivation of his First Amendment rights by the alleged confiscation of the prisoner's Bible and Christian doctrine books. The district dismissed the action on the grounds that the prisoner was not entitled to in forma pauperis (IFP) status, under the three strikes rule. The appeals court reversed and remanded. On remand, the defendants moved to dismiss, and the prisoner moved for to correctional officer. The district court granted the defendants' motions in part and denied in part, and granted the plaintiff's motion. The court held that the prisoner's claim that he was deprived of his First Amendment rights due to the confiscation of his Bibles and Christian doctrine books by prison officials was precluded on exhaustion grounds, under the Prison Litigation Reform Act (PLRA), even though the prisoner exhausted his claim, where the prisoner filed suit two days before the prison grievance process itself was exhausted. The court found that the prisoner's claim that his Eighth Amendment rights were violated, due to exposure to second-hand smoke by his forced housing with a prisoner who smoked and due to prison officials' failure to issue a medical order prohibiting his housing with a smoker, satisfied the exhaustion requirements by completing the grievance process, as required by the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)

U.S. District Court
DUE PROCESS
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Johnson v. Ozmint, 567 F.Supp.2d 806 (D.S.C. 2008). A state prison inmate brought a state court § 1983 action against the director of a state's department of corrections, alleging improper debiting of his trust account to pay for legal copies and postage, improper classification, improper conditions of confinement, and denial of rehabilitative opportunities. The director removed the action to federal court. The district court granted summary judgment for the director and remanded. The court held that the inmate's written requests to prison staff, and correspondence addressing issues of prison conditions, did not satisfy the Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement, so as to permit the inmate's § 1983 action involving the same prison conditions to go forward. According to the court, the inmate's filing of grievances, after commencing the § 1983 action, could not satisfy the PLRA administrative exhaustion requirement with respect to claims made in the § 1983 suit. (South Carolina Department of Corrections)

U.S. District Court
DUE PROCESS
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Johnston v. Maha, 584 F.Supp.2d 612 (W.D.N.Y. 2008). A pretrial detainee brought an action against employees of a county jail, alleging violations of his constitutional rights under § 1983 and violations of the Americans with Disabilities Act (ADA). The defendants moved for summary judgment and the district court granted the motion. The court held that the inmate failed to exhaust administrative remedies for the purposes of the Prison Litigation Reform Act (PLRA) as to some of his § 1983 and Americans with Disabilities Act (ADA) claims against employees of the county jail, where the inmate either did not pursue appeals at all, or did not pursue appeals to the final step. (Genesee County Jail, New York)

U.S. District Court
RETALIATION

Lindell v. Schneider, 531 F.Supp.2d 1005 (W.D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the

employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. District Court
MONETARY
DAMAGES
RETRALIATION

May v. Rich, 531 F.Supp.2d 998 (C.D.Ill. 2008). A state prisoner brought suit against a prison employee, alleging civil rights claims for denial of access to the courts and retaliation for filing grievances and litigation. Following a jury trial, the jury returned a general verdict in favor of the prisoner, awarding \$2,388. The prison employee moved for judgment as matter of law or, in the alternative, for a new trial. The district court granted the motion, entering a judgment for the defendant as a matter of law. The court held that the prisoner did not suffer an actual injury, as required for a denial of access claim. The court found that the employee did not retaliate against the prisoner by filing a disciplinary report based on his possession of prison contraband. The court noted that the employee had an absolute duty to file a disciplinary report against the prisoner for possession of carbon paper, which was contraband in the prison system, such that reporting the prisoner could not be deemed retaliation for the prisoner's exercise of First Amendment rights in filing civil rights suits. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Moore v. Bennette, 517 F.3d 717 (4th Cir. 2008). A prisoner filed a § 1983 action against prison officials alleging deliberate indifference to his medical needs and retaliation. The district court dismissed and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. On remand, the district court dismissed and the prisoner appealed again. The appeals court affirmed in part, reversed and remanded. The court held that the prisoner was not required to name particular defendants in prison grievances in order to satisfy the Prison Litigation Reform Act's (PLRA) exhaustion requirements. According to the court, nothing in prison grievance procedures required the prisoner to identify specific individuals in his grievances. (Southern Correctional Institute, North Carolina Department of Correction)

U.S. Appeals Court
DUE PROCESS
EXHAUSTION

Ngo v. Woodford, 539 F.3d (9th Cir. 2008). A state prisoner brought a § 1983 action against a prison warden, alleging First Amendment and due process violations resulting from the prison's decision that the prisoner could not participate in special programs. The district court dismissed the action for failure to exhaust administrative remedies. The prisoner appealed. The appeals court reversed and the United States Supreme Court granted certiorari. On remand, the appeals court affirmed, holding that the prisoner's administrative appeal was not timely filed. According to the court, the prisoner failed to exhaust administrative remedies before bringing his § 1983 action, where the 15-day period for administrative appeals began to run on the date of the prison's decision that the prisoner could not participate in "special programs," rather than on the date he actually felt the effects of the prison's decision, and the prisoner filed an administrative appeal after the 15-day period had expired. (San Quentin State Prison, California)

U.S. Appeals Court
DUE PROCESS
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Obrieht v. Raemisch, 517 F.3d 489 (7th Cir. 2008). A state prisoner filed a pro se § 1983 action against prison officials alleging that he was denied procedural due process when transferred to a state facility and when he was forced to take psychotropic medications. The district court granted summary judgment to the officials and denied motions for reconsideration. The prisoner appealed. The appeals court affirmed, finding that the prisoner failed to exhaust challenges to the transfers and forced medication. The court also found that the prisoner forfeited the argument that exhaustion should be excused because of an inadequate law library because that issue had not been raised in the district court. The court noted that a prisoner's exhaustion of administrative remedies before filing a § 1983 claim is required even if the prisoner believes his efforts in securing relief will be futile or if the administrative authority has no power to grant the requested relief. (Wisconsin Resource Center and the Wisconsin Department of Corrections)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Pavey v. Conley, 528 F.3d 494 (7th Cir. 2008). A prisoner filed a § 1983 suit for damages, governed by the Prison Litigation Reform Act, claiming officers broke his arm when using excessive force to remove him from his cell. The court denied the officers' motion to reconsider a grant of the prisoner's jury demand on factual issues related to an affirmative defense. The officers filed an interlocutory appeal. The appeals court reversed and remanded. The court held that the prisoner was not entitled by the Seventh Amendment to a jury trial, rather than a bench trial, on factual issues relating to his affirmative defense of failure to exhaust administrative remedies. The prisoner alleged that he could not prepare a grievance as he was left-handed and his left arm was broken, and that he was transferred to another prison before prison officials conducted a promised investigation, which would form the basis of his grievance. (Indiana)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Piggie v. Riggle, 548 F.Supp.2d 652 (N.D.Ind. 2008). A prisoner brought a pro se action against a prison official, alleging that she transferred him to another facility because he filed grievances and lawsuits against prison staff. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether: the official was personally involved in the transfer; the asserted reasons for the transfer were pretextual; and the prisoner exhausted remedies under the Prison Litigation Reform Act (PLRA). (Miami Correctional Facility, Pendleton Correctional Facility, Indiana)

U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act PROCEDURES	<p><i>Pugh v. Goord</i>, 571 F.Supp.2d 477 (S.D.N.Y. 2008). State prisoners sued prison officials, alleging violations of their constitutional and statutory rights to free exercise of Shi'a Islam and to be free from the establishment of Sunni Islam. Following remand from the appeals court, the plaintiffs moved for summary judgment. The district court granted the motions in part and denied in part. The court held that one prisoner's claim for injunctive relief qualified for a "capable of repetition, yet evading review" exception, and therefore was not rendered moot by his transfer to another facility. The court noted that the corrections department had the ability to freely transfer the prisoner between facilities prior to the full litigation of his claims, and there was a reasonable expectation that the prisoner would be subject to the same action again, given that the department's policies were applicable to all of its prison facilities. The court held that two prisoners exhausted available remedies, as required by PLRA, through the state Inmate Grievance Program (IGP), even though the prisoners failed to mention any allegedly unlawful conduct by individual defendants in their grievances. According to the court, where the prison officials decided three consolidated grievances rather than deciding one grievance and forwarding a response of that grievance to the two prisoners, the subject matter of the consolidated grievance was the same as the subject matter of litigation. (New York State Department of Corr. Services, Mid-Orange Correctional Facility and Fishkill Correctional Facility)</p>
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act	<p><i>Short v. Greene</i>, 577 F.Supp.2d 790 (S.D.W.Va. 2008). A jail inmate brought an action against a state, complaining of jail conditions. The district court denied the state's motion to dismiss. The court held that the state failed to demonstrate that the inmate had not exhausted administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA). (Southwestern Regional Jail, West Virginia)</p>
U.S. Appeals Court PROCEDURES RETALIATION	<p><i>Smith v. Mosley</i>, 532 F.3d 1270 (11th Cir. 2008). A prison inmate brought a civil rights action against a warden, assistant warden, and hearing review officer for allegedly retaliating against him for exercising his free speech rights in complaining of certain practices at the prison. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The court held that the inmate's letter to the assistant warden, complaining that prisoners like himself, with "compromised immune systems," were required to go outside in "thirty-something degree temperatures, wearing substandard clothing," and that he was given a "diet composed of 95% starch" when prison officials knew that he was diabetic, constituted a protected exercise of his free speech rights. But the court held that a reasonable jury could not find that prison officials would not have disciplined the inmate but for his having filed such grievances. The court found that objective administrators standing in the prison officials' shoes would assume that the gist of what the inmate said in his letter and the language that he employed, which "reeked of disrespect for the administrators' authority, would be noised about the prison's population and, if ignored, could seriously impede their ability to maintain order and thus achieve the institution's penological objectives." (Easterling Correctional Facility, Alabama)</p>
U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act PROCEDURES RETALIATION	<p><i>Turner v. Burnside</i>, 541 F.3d 1077 (11th Cir. 2008). A state prisoner brought a § 1983 action against various officials and employees of the Georgia Department of Corrections (DOC), alleging that he was subjected to cruel and unusual punishment and deliberately indifferent medical care. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The court held that the prisoner was not required to file an additional grievance or seek leave to file an emergency or out-of-time grievance. The court found that a prison official's serious threats of substantial retaliation against the prisoner for lodging a grievance could make the administrative remedy "unavailable" for the purpose of the Prison Litigation Reform Act (PLRA) exhaustion requirement, and the administrative remedy of filing an appeal would be unavailable. (Men's State Prison, Hardwick, Georgia)</p>
U.S. District Court DUE PROCESS	<p><i>Williams v. Hayman</i>, 657 F.Supp.2d 488 (D.N.J. 2008). A state prisoner brought an action for violation of the Americans with Disabilities Act (ADA), alleging denial of various social and educational programs and services at a prison because he was deaf, and naming as a defendant the Commissioner of the New Jersey Department of Corrections (NJDOC), the Executive Director of the New Jersey Parole Board, the prison's chief administrator, the prison's assistant administrator, the prison's parole administrator, a corrections officer, two social workers at prison, and the prison's psychiatrist. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's deafness inhibited his capacity to express his grievances comprehensibly in writing in accordance with prison grievance program's requirements. The court also found a genuine issue of material fact as to the prison social worker's ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. (South Woods State Prison, New Jersey)</p>
2009	
U.S. Appeals Court RETALIATION	<p><i>Brodheim v. Cry</i>, 584 F.3d 1262 (9th Cir. 2009). A prisoner brought an action against a prison appeals coordinator, warden and chief deputy warden alleging his First Amendment right to petition the government for redress of grievances was violated. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issue of material fact as to whether the prison appeals coordinator's warning to the prisoner that he should be "careful" about what he writes and requests in his administrative grievances intimated that some form of punishment or adverse action would follow a failure to comply. (California Medical Facility)</p>
U.S. District Court RETALIATION	<p><i>Brown v. Corsini</i>, 657 F.Supp.2d 296 (D.Mass. 2009). Inmates brought a pro se § 1983 action against prison officials, alleging retaliatory transfer, deliberate indifference and due process violations. The district court granted the officials' motion for summary judgment. The court held that the inmates failed to demonstrate that they would not have been transferred to a new prison but for the prison officials' retaliatory motive, for filing grievances about being required to install security screens on other prisoners' windows. The court noted that the inmates had refused</p>

to perform work assignments in the prison's maintenance shop in violation of prison regulations. According to the court, prison officials were not deliberately indifferent to the inmates' safety in violation of the Eighth Amendment by refusing to reassign them to new jobs despite their fear of retribution by other prisoners. The prisoners had installed security screens on other prisoners' windows as part of their job duties. The court noted that there was no evidence that the inmates were subjected to ominous threats or violence by other prisoners. (Bay State Correctional Center, Massachusetts)

U.S. District Court
RETALIATION

Burke v. North Dakota Dept. of Correction and Rehabilitation, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. The court held that prison officials did not violate the inmate's Eighth Amendment rights when they housed an easily-provoked prisoner in the cell next to his cell, despite the inmate's contention that officials placed him there in retaliation for his civil action against them. The inmate admitted that he never had any problems with the prisoner prior to their altercation, and the inmate acknowledged that he provoked the altercation. The court held that an officer's filing of a disciplinary charge against the inmate, after the inmate filed a grievance with the warden alleging that the officer had failed to break up an altercation involving the inmate, was not retaliatory in violation of the inmate's First Amendment rights, where prison officials investigated the altercation, the inmate admitted that he provoked the altercation, and the inmate was found guilty of a disciplinary violation. (North Dakota State Penitentiary)

U.S. Appeals Court
DUE PROCESS
PROCEDURES

Burks v. Raemisch, 555 F.3d 592 (7th Cir. 2009). A prisoner who allegedly suffered permanent vision impairment due to a prison's failure to treat his eye condition while he was incarcerated brought a civil rights action against prison officials for deliberate indifference to a serious medical need. The district court dismissed the prisoner's complaint, and he appealed. The appeals court affirmed in part and remanded. The court held that the prisoner's allegations regarding a prison official's role as head of the prison's medical unit in treatment of the prisoner's eye condition were sufficient to support his § 1983 claim against the official for deliberate indifference to a serious medical need. Although the prisoner's complaint did not say that he ever spoke with the official or explain how she came to know of his eye condition, it may have been possible to show through discovery that the physicians and nurses to whom the prisoner spoke reported to the official on his condition, and that the official rather than the other members of the health unit made the decision to leave the condition untreated. The court found that a prison complaint examiner was not deliberately indifferent to the prisoner's serious medical need when she rejected as untimely the prisoner's grievance regarding the alleged failure of the prison's medical staff to treat his eye condition. The court noted that the examiner was fulfilling her duty to dismiss untimely grievances, and was not required to go beyond the duties of her job and try to help the prisoner. (Milwaukee Secure Detention Facility, Wisconsin)

U.S. District Court
RETALIATION

Burton v. Lynch, 664 F.Supp.2d 349 (S.D.N.Y. 2009). A state prisoner brought a § 1983 action against a prison superintendent, corrections officers, prison nurses and a physician alleging violations of his federal constitutional rights. A nurse, the superintendent, and the physician moved to dismiss and the district court granted the motion in part and denied in part. The court held that the prisoner's grievance relating to his alleged beating by corrections officers, for which the prisoner sought an investigation into the beating and to be seen by a doctor, presented no ongoing situation that the prison's superintendent could remedy, such that the superintendent was not personally involved in the alleged violation of the prisoner's constitutional right. According to the court, although the request to see a doctor referred to an ongoing situation, by the time superintendent received it the prisoner had been seen by a doctor, and by the time superintendent answered the prisoner's appeal the prisoner had been transferred to another prison. The court found that the prisoner's allegations: (1) that a prison doctor retaliated against him for a previous grievance he had filed against the doctor by denying medical evaluation, treatment, and adequate pain medication; (2) that all levels of the inmate grievance process determined that the doctor had, by his own admission, prescribed the prisoner a medication to which he was allergic; (3) that the doctor failed to detect a condition which was later determined to require surgery on the prisoner's elbow; (4) and that the doctor told the prisoner his elbow looked fine and that his allergy to the medication was the prisoner's "problem," were sufficient to state a prima facie case of retaliation under the First Amendment. (Fishkill Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Clark v. Williams, 619 F.Supp.2d 95 (D.Del. 2009). An inmate sued state corrections officials, claiming that they violated his Eighth Amendment rights when he was incarcerated in a cell with an inmate infected with human immunodeficiency virus (HIV) and Hepatitis B, and by failing to provide him with medical treatment when he contracted Hepatitis B. The district court held that the inmate had no administrative remedy, and thus, the exhaustion requirement of the Prison Litigation Reform Act (PLRA) did not have to be met. The court ruled that the issue of whether prison officials were aware that the inmate was living under conditions that exposed him to a communicable disease that posed an unreasonable risk of serious harm to his future health was a triable fact issue. According to the court, the medical services administrator and a physician were not deliberately indifferent to the inmate's medical needs. (Howard R. Young Correctional Institution, Delaware)

<p>U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act PROCEDURES RETALIATION FOR LEGAL ACTION</p>	<p><i>Dace v. Smith-Vasquez</i>, 658 F.Supp.2d 865 (S.D.Ill. 2009). A state prisoner brought a § 1983 action against prison employees, alleging that his exposure to excessively cold conditions during his incarceration resulted in a deprivation of his Eighth Amendment rights, and that employees unconstitutionally retaliated against him by exposing him to such conditions. The employees moved for summary judgment and the district court granted the motion. The court held that the prisoner failed to administratively exhaust his § 1983 claims against prison employees in accordance with Illinois Department of Corrections grievance procedures, as required by the Prison Litigation Reform Act (PLRA). According to the court, even if the employees failed to directly respond to some or all of the prisoner's grievances, the fact remained that the prisoner failed to take up those unresolved grievances with a Grievance Officer as required by the grievance procedures. The court found that the prisoner failed to establish that his prior lawsuit against prison officials and/or his filing of grievances was the "motivating factor" for the alleged actions of prison employees, including exposing the prisoner to extreme cold, not allowing him to go to the commissary, handcuffing him, damaging his property, and not responding to his grievances, as would support his § 1983 retaliation claim against the employees. (Menard Correctional Center, Illinois)</p>
<p>U.S. Appeals Court DUE PROCESS EXHAUSTION PLRA- Prison Litigation Reform Act</p>	<p><i>Davis v. Barrett</i>, 576 F.3d 129(2nd Cir. 2009). A state prisoner brought a pro se § 1983 action against a state department of correctional services (DOCS) hearing officer, seeking damages for the alleged abridgment of his procedural due process rights in connection with a disciplinary hearing resulting in the prisoner's administrative segregation for 55 days. The district court granted summary judgment in favor of the hearing officer and the prisoner appealed. The appeals court vacated and remanded. The court held that the prisoner adequately exhausted his administrative remedies by filing an administrative appeal following his administrative disciplinary hearing. The court noted that state prison regulations did not allow the prisoner to separately grieve the hearing officer's alleged conduct in presiding over the hearing, and the prisoner was not required to grieve separately the conditions of his administrative confinement to satisfy the exhaustion requirement under the Prison Litigation Reform Act. The court found that summary judgment was precluded by a genuine issue of material fact as to the actual conditions of the prisoner's segregated confinement for 55 days, imposed following a disciplinary hearing. (Elmira Correctional Facility, New York)</p>
<p>U.S. District Court EXHAUSTION PLRA-Prison Litigation Reform Act</p>	<p><i>Davis v. D.C. Dept. of Corrections</i>, 623 F.Supp.2d 77 (D.D.C. ,2009). An inmate, proceeding pro se, brought a § 1983 action against the District of Columbia Department of Corrections, the director of the Department, an administrator, warden and health care director, and other department employees, alleging that he was sexually harassed, denied medical and dental treatment, physically assaulted and retaliated against during his confinement. The district court granted some motions for summary judgment and denied others. The district court held that the inmate failed to exhaust administrative remedies prior to filing claims against the warden, and that the director of the health care corporation could not be held liable for the actions of jail and correctional treatment facility employees. The court held that summary judgment was precluded by genuine issues of material fact regarding whether the inmate exhausted administrative remedies prior to filing a § 1983 claim against the D. C. Department of Corrections by telling staff members about the sexual misconduct. (District of Columbia Jail, District of Columbia Correctional Treatment Facility)</p>
<p>U.S. Appeals Court EXHAUSTION PLRA-Prison Litigation Reform Act RETALIATION</p>	<p><i>Espinal v. Goord</i>, 558 F.3d 119 (2nd Cir. 2009). A district court granted partial summary judgment in favor of the state defendants on the prisoner's civil rights claim for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), and the prisoner appealed. The appeals court affirmed in part, and reversed and remanded in part. The court held that state grievance procedures did not require an inmate to specifically name the responsible parties, and therefore the inmate did not fail to exhaust his administrative remedies under PLRA by omitting the names of the responsible parties from his prison grievance. The court found that the passage of only six months between the dismissal of the prisoner's lawsuit and an allegedly retaliatory beating by officers, one of whom was a defendant in the prior lawsuit, was sufficient to support an inference of a causal connection, and therefore a genuine issue of material fact existed as to the causal connection element of the prisoner's First Amendment retaliation claim. (New York State Department of Corr. Services, Green Haven Correctional Facility)</p>
<p>U.S. District Court DUE PROCESS RIGHT TO ACCESS</p>	<p><i>Gray v. Hernandez</i>, 651 F.Supp.2d 1167 (S.D.Cal. 2009). A state prisoner brought a § 1983 action, seeking damages and declaratory and injunctive relief, against an acting warden, captain, and two employees in a prison library. The prisoner alleged he was placed in administrative segregation pending the investigation of rule violation charges filed by the two employees, accusing him of attempting to extort money from them by offering to settle his potential suit against them. The district court held that the prisoner sufficiently alleged a chilling of his First Amendment right to file grievances and pursue civil rights litigation by alleging that his placement in administrative segregation caused him mental and financial harms. The court held that the prisoner's allegations that his placement in administrative segregation forced him to endure 24-hour lock-down, lack of medical treatment, only one shower every three days, and lack of exercise did not constitute an allegation of a dramatic departure from the standard conditions of confinement, as would invoke procedural due process protections. The court noted that an inmate does not have a liberty interest, for purposes of procedural due process, in being housed at a particular institution or in avoiding isolation or separation from the general prison population, unless the proposed transfer will subject the inmate to exceptionally more onerous living conditions, such as those experienced by inmates at a "Supermax" facility. (Mule Creek State Prison, High Desert State Prison, Donovan State Prison, California)</p>
<p>U.S. Appeals Court EXHAUSTION PLRA-Prison Litigation Reform Act RIGHT TO ACCESS</p>	<p><i>Griffin v. Arpaio</i>, 557 F.3d 1117 (9th Cir. 2009). A state inmate brought a § 1983 action against a county sheriff and others, alleging cruel and unusual punishment and unsafe living conditions based on their failure to assign him a lower bunk for medical reasons. The defendants moved to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The district court granted the motion and the inmate appealed. The appeals court affirmed. Although the court found that a prison grievance need only alert the prison to the nature of the wrong for which redress is sought and the inmate's failure to grieve deliberate indifference to his serious medical needs did not invalidate his exhaustion attempt, the inmate did not properly exhaust administrative</p>

remedies under PLRA. The court held that the inmate's grievance regarding his need for a lower bunk assignment did not provide sufficient notice of the staff's alleged disregard of his lower bunk assignments to allow officials to take appropriate responsive measures, as required to properly exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) before he brought a § 1983 action. The officials responding to the inmate's grievance reasonably concluded that a nurse's order for a lower bunk assignment solved the inmate's problem. (Maricopa County Sheriff, Arizona)

U.S. Appeals Court
MONETARY
DAMAGES
RETALIATION

Haynes v. Stephenson, 588 F.3d 1152 (8th Cir. 2009). A state inmate brought a § 1983 action for retaliatory discipline against a corrections officer who had filed a disciplinary report against the inmate after the inmate had filed a grievance report against an officer for directing "profane or abusive language" toward him. After a bench trial, the district court awarded the inmate \$1.00 in compensatory damages and \$2,500.00 in punitive damages. The officer appealed. The appeals court affirmed. The appeals court held that the district court did not err in concluding that the inmate established a prima facie case of retaliatory discipline and in determining that the officer's retaliation against the inmate was reprehensible. According to the appeals court, evidence supported the district court's findings that the officer was knowingly untruthful in claiming that the inmate lied in the grievance, the officer's retaliatory conduct was willful, reckless, and malicious, and the officer knew that Arkansas Department of Corrections (ADC) regulations prohibited him from filing the disciplinary report. The court held that the district court did not err in concluding that the high, 2,500:1 ratio of punitive to economic damages awarded to the inmate in his § 1983 action did not offend due process, where the officer's action was sufficiently egregious to sustain the punitive damages. (Arkansas Dept. Corrections, Tucker Max. Security Unit)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Hernandez v. Coffey, 582 F.3d 303 (2nd Cir. 2009). A prisoner brought a civil rights action alleging that he was beaten by corrections officers and denied medical treatment by a nurse. The district court entered summary judgment in favor of the defendants on the basis of the prisoner's failure to exhaust administrative remedies. The prisoner appealed. The appeals court vacated and remanded. The appeals court held that the district court was required to first explain the procedural requirements for responding to a summary judgment motion and its potential consequences, and to provide the prisoner with an opportunity to take discovery and submit evidence in response to the motion. According to the appeals court, the district court could not convert the defendants' motion for judgment on the pleadings in the prisoner's pro se civil rights action into a motion for summary judgment, then grant the motion, extinguishing the claim, without first giving the prisoner notice of the conversion and an opportunity to take relevant discovery and to submit any evidence relevant to the issues raised by the motion. (Clinton Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Hinton v. Corrections Corp. of America, 623 F.Supp.2d 61 (D.D.C. 2009). An inmate sued the operators of a correctional facility under § 1983, asserting that overcrowded and unsanitary conditions had caused him to become infected with the methicillin-resistant *Staphylococcus aureus* (MRSA) bacteria. The district court granted the operators' motion for summary judgment, finding that the inmate failed to exhaust his administrative remedies. The court noted that the inmate had access to an inmate handbook, was familiar with parts of it, and did not dispute that he had other means of informing himself of the requirements of the official grievance process. (Central Treatment Facility, District of Columbia, operated by Corrections Corporation of America)

U.S. Appeals Court
DUE PROCESS
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Johnson v. Rowley, 569 F.3d 40 (2nd Cir. 2009). A Muslim federal prisoner proceeding pro se filed suit against his supervisor at a prison factory, claiming that his termination from a prison job assignment was due to the supervisor's personal animus towards Muslims in violation of the Due Process Clause and the First Amendment. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed in part. The court held that the federal prisoner had no protected property interest in his job assignment at a prison factory, precluding the prisoner's due process claim against a former supervisor for terminating his job assignment. The court noted that property interests protected by the Due Process Clause are not created by the Constitution, but rather are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. The court also noted that employees "at will" have no property interest protected by the Due Process Clause in their continued employment. The court found that the prisoner failed to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the prisoner failed to comply with the Bureau of Prisons' (BOP) procedural rules creating a four-step administrative grievance system for prisoner complaints, by not raising his First Amendment claim until the third step of grievance process. According to the court, the prisoner lacked good cause for failing to exhaust administrative remedies. (Federal Correctional Institution, Otisville, New York)

U.S. Appeals Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Marella v. Terhune, 568 F.3d 1024 (9th Cir. 2009). A state prisoner brought a § 1983 action against prison officials under the Prison Litigation Reform Act (PLRA), alleging violations of his constitutional rights stemming from a knife attack by his fellow inmates. The district court dismissed the action for failure to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded. The court held that the California state prisoner was not required to exhaust his administrative remedies beyond the second level of the prison appeals system in order to bring a § 1983 action under the Prison Litigation Reform Act (PLRA), where, after filing his first level appeal, the prisoner had been informed that the appeals process was unavailable to him. (Calipatria State Prison Facility "B", California)

U.S. Appeals Court
RETALIATION

Mays v. Springborn, 575 F.3d 643 (7th Cir. 2009). A prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleged retaliation for his complaints about the searches, denial of his request for dietary supplements which he considered to be religious necessities, alleged inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted

the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that whether strip searches were conducted in a harassing manner intended to humiliate and cause psychological pain, and whether guards subjected the prisoner to a non-routine search in retaliation for his complaints about strip searches, were questions for the jury. (Stateville Correctional Center, Illinois)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Phipps v. Sheriff of Cook County, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paraplegic and partially-paralyzed pretrial detainees currently and formerly housed at a county prison brought a class action against the county and county sheriff, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The parties cross-moved for summary judgment. The district court denied the motions for summary judgment. The court held that the sheriff waived the affirmative defense that the plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the sheriff raised that defense for the first time in his motion for summary judgment. The court held that paraplegic and partially-paralyzed pretrial detainees who were formerly housed at the county prison were not “prisoners confined in jail” for the purposes of the Prison Litigation Reform Act (PLRA), and thus their civil rights claims were not subject to, or barred by, PLRA. The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were “services” and “programs” within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. (Cook County Department of Corrections, Illinois)

U.S. District Court
RETALIATION

Savage v. Judge, 644 F.Supp.2d 550 (E.D.Pa. 2009). Prison inmates brought a civil rights action against prison officials for allegedly violating their civil rights in connection with reassignment of the inmates to different cells and assaults allegedly committed upon them. Inmates not only asserted unlawful retaliation claims, but claimed that officials exercised excessive force in violation of their Eighth Amendment rights and unlawfully conspired to violate their rights. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officials, in separating the cellmates from each other and in transferring one to another facility, were retaliating against the cellmates for their pursuit of grievances, or were taking necessary action to prevent the cellmates from engaging in homosexual activity in a cell. The court also found a genuine issue of material fact as to how an inmate sustained an injury to his face while he was being transferred to another cell. (Graterford L-Unit- RHU, Pennsylvania Department of Corrections)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Shariff v. Coombe, 655 F.Supp.2d 274 (S.D.N.Y. 2009). Disabled prisoners who depended on wheelchairs for mobility filed an action against a state and its employees asserting claims pursuant to Title II of the Americans with Disabilities Act (ADA), Title V of Rehabilitation Act, New York State Correction Law, and First, Eighth, and Fourteenth Amendments. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a state prisoner who depended on a wheelchair for mobility was not required by the administrative remedy exhaustion requirement under the Prison Litigation Reform Act (PLRA) to appeal a grievance regarding the height of a food service counter before bringing suit, where the grievance that he filed conceivably was resolved in his favor. The court noted that although the height of a counter was not lowered in response to the grievance, the prison had attempted to remedy the situation by changing the way in which hot food was served from the counter. The court found that a prisoner who had his grievance denied because he no longer was in custody of the prison, and who never appealed to the final stage of the administrative program, did not exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA) before bringing a lawsuit regarding that grievance. (New York State Dept. of Corr. Services, Green Haven Correctional Facility)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act
PROCEDURES

Shaw v. Jahnke, 607 F.Supp.2d 1005 (W.D.Wis. 2009). A state prisoner brought a civil rights action against a corrections officer alleging excessive force. The district court denied the officer’s motion for summary judgment. The court held that the prisoner had exhausted his administrative remedies. According to the court, the prisoner made sufficient efforts to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA), and that it was the corrections department’s misinformation rather than any negligence or manipulation on the prisoner's part that prevented him from completing the grievance process. (Columbia Corr’l Institution, Wisconsin)

U.S. District Court
RETALIATION

Sikorski v. Whorton, 631 F.Supp.2d 1327 (D.Nev. 2009). A state prisoner and his mother and sister brought a § 1983 action against prison officials and correctional officers, alleging violation of their First and Fourteenth Amendment rights by censoring, refusing to deliver, and returning various pieces of mail addressed to the prisoner and failing to provide them with notice and the opportunity to appeal their decisions. The prisoner also alleged that officials retaliated against him for his use of the prison grievance system. The court held that the prison's policy of not allowing inmates names and addresses of private citizens without express, informed consent of the citizens did not violate the First Amendment rights of the prisoner who was issued an “unauthorized mail notification” relating to a citizens' petition for recommendations regarding parole and sentencing procedures, which was forwarded to the prisoner by a third-party. According to the court, there was a valid, rational connection between the policy and a legitimate governmental interest of protecting citizens, there were alternative means of exercising rights that remained open to the prisoner, accommodation of the asserted rights would have had a significant impact on guards and other inmates, and on the allocation of prison resources generally, and that there were no alternatives to the policy. The court found that the prison's practice of returning mail to the sender unopened when such mail contained tape or stickers did not violate the First Amendment where the policy was rationally related to a legitimate governmental interest in preventing illegal chemical drugs from coming into the prison. The court held that the prison's policy of not giving notice and the opportunity to appeal to inmates regarding mail that was returned to the

sender because of noticeable violations on the outside of the envelope did not violate the First Amendment or due process. The court noted that providing the accommodation of giving notice and opportunity to appeal for every piece of mail with a noticeable violation would have placed a significant burden on prison resources. The court found that the prisoner failed to establish that a correctional officer retaliated against him, in violation of § 1983, for exercising the prison grievance system by issuing notices of charges against the prisoner, returning unopened letters addressed to the prisoner, and issuing an unauthorized mail notification. The court held that the officer acted for legitimate correctional reasons, and the prisoner's exercise of his First Amendment rights was not chilled. (Nevada State Prison)

U.S. District Court
RETALIATION

Skinner v. Holman, 672 F.Supp.2d 657 (D.Del. 2009). A prisoner brought a § 1983 action against prison employees, alleging he was retaliated against for having filed a prison grievance. The defendants moved to dismiss the claims as frivolous and the district court denied the motion. The court held that the inmate's allegations that he was denied transfer to a minimum security prison, was prevented from working, and was kept in disciplinary confinement for several months as a result of a grievance he had filed were sufficient to state a claim of retaliation for the exercise of his First Amendment rights by prison employees. (James T. Correctional Center, Delaware)

U.S. District Court
EXHAUSTION
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Wilbert v. Quarterman, 647 F.Supp.2d 760 (S.D.Tex. 2009). A state prisoner, proceeding pro se, brought a § 1983 action alleging that two correctional officers violated his Eighth Amendment right to be free from cruel and unusual punishment when they allowed him to be transported without seatbelts, resulting in injuries following the vehicle's sudden stop. The district court granted the defendants' motion to dismiss. Although the court held that the prisoner stated a claim of deliberate indifference in violation of the Eighth Amendment, the prisoner did not timely file a grievance and therefore the prisoner did not satisfy the exhaustion of the administrative remedies requirement of the Prison Litigation Reform Act. The prisoner alleged that he had requested a seatbelt and was denied, that he was not properly seated in the Texas Department of Criminal Justice (TDCJ) transport van, that the van was traveling at an unsafe speed, and that he was injured when the van suddenly stopped. (Texas Department of Criminal Justice, McConnell Unit)

U.S. District Court
EXHAUSTION
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Zimmerman v. Schaeffer, 654 F.Supp.2d 226 (M.D.Pa. 2009). Current and former inmates at a county jail brought a § 1983 action against the county, corrections officers, and prison officials, alleging that they were abused by officials during their incarceration in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. The court held that a former inmate of a county correctional facility was not required to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) prior to filing Eighth Amendment claims against prison officials and corrections officers under § 1983, where the inmate was not incarcerated at the time complaint was filed. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

U.S. District Court
RETALIATION

Zulu v. Botta, 613 F.Supp.2d 391 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 suit against the director of a city library, who was not a state corrections department employee. The director moved for summary judgment and the district court granted the motion. The court held that the director was not involved in any of the alleged violations of the inmate's rights. The court found that while there were some issues over the inmate's excessive book requests, there was no evidence that the director had anything to do with that matter, and that there was no evidence that the director conspired with corrections employees to file a false misbehavior report against the inmate in retaliation for his filing of a grievance. (Geneva Free Library, Geneva, New York)

2010

U.S. Appeals Court
PROCEDURES

Armstrong v. Schwarzenegger, 622 F.3d 1058 (9th Cir. 2010). A class of disabled state prison inmates and parolees moved for an order requiring state prison officials to track and accommodate the needs of disabled parolees housed in county jails, and to provide access to a workable grievance procedure pursuant to the officials' obligations under the Americans with Disabilities Act (ADA), Rehabilitation Act, and prior court orders. The district court granted the motion and the state appealed. The appeals court affirmed in part and vacated in part. The appeals court held that: (1) contractual arrangements between the state and a county for incarceration of state prison inmates and parolees in county jails were subject to ADA; (2) the district court's order was not invalid for violating federalism principles; (3) the state failed to show that the order was not the narrowest, least intrusive relief possible, as required by the Prison Litigation Reform Act (PLRA); but (4) there was insufficient evidence to justify the system-wide injunctive relief in the district court's order. The court noted the state's recent proposal to alter its sentencing practices to place in county jails approximately 14,000 persons who would otherwise be incarcerated in state prisons. The court also noted that the state's contracts with counties were not simply for incarceration, but to provide inmates and parolees in county jails with various positive opportunities, from educational and treatment programs, to opportunities to contest their incarceration, to the fundamentals of life, such as sustenance, and elementary mobility and communication, and the restrictions imposed by incarceration meant that the state was required to provide these opportunities to individuals incarcerated in county jails pursuant to state contracts to the same extent that

they were provided to all state inmates. The district court's order did not require the state to shift parolees to state facilities if county jails exhibited patterns of ADA non-compliance; rather, the order required that, if the state became aware of a class member housed in a county jail who was not being accommodated, the state either ensure that the jail accommodated the class member, or move the class member to a state or county facility which could accommodate his needs. In finding that statewide injunctive relief was not needed, the court held that evidence of ADA violations was composed largely of single incidents that could be isolated, and the district court's order identified no past determinations that showed class members in county jails were not being accommodated. (California Department of Corrections and Rehabilitation)

U.S. District Court
RETALIATION

Caldwell v. Luzerne County Corrections Facility Management Employees, 732 F.Supp.2d 458 (M.D.Pa. 2010). A county prison inmate brought civil rights claims against prison officials. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated claims of excessive force against prison officials with respect to various incidents in which he was allegedly tased, causing him to hit his forehead on a cell wall, forced to remain on a hard mattress at an uncomfortable angle, causing severe neck pain, strip searched, placed in 5-point restraints, causing swollen and bleeding wrists, pulled forcefully while handcuffed, causing his hands to swell and bleed, punched and slapped in the back while handcuffed, maced, and slammed onto the floor, kicked and punched. The court held that the inmate's allegations that in four incidents occurring over a span of four months he was placed on a mattress at an awkward angle for over 12 hours and subjected to severe pain, not permitted to use the bathroom, eat, drink, or shower while placed in 5-point restraints for many hours, and was refused a blanket while restrained in a cell with broken windows and an air vent blowing directly on him, were sufficient to state a conditions of confinement claim under the Eighth Amendment. The court held that the inmate's allegations that he was subjected by prison officials to excessive force and unconstitutional conditions of confinement, and that the officials' conduct reflected retaliation for his filing of lawsuits against them, stated a claim for retaliation under § 1983. (Luzerne County Corrections Facility, Pennsylvania)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
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Cantley v. West Virginia Regional Jail and Correctional Facility Authority, 728 F.Supp.2d 803 (S.D.W.V. 2010). A pretrial detainee who was strip searched and deloused brought a class action against a regional jail authority, challenging its strip search and delousing policies. The jail authority moved to dismiss. The district court denied the motion. The court held that the detainee stated a claim in regard to the strip search policy and in regard to the delousing policy. The court found that a jail authority official sued in his individual capacity was not entitled to qualified immunity. The detainee alleged that the jail had a blanket policy of conducting visual cavity strip searches of all pretrial detainees charged with misdemeanors or other minor crimes, regardless of whether the detainees were intermingled with the general population of the jail, and that there was no reasonable suspicion that he harbored weapons or contraband. The court ruled that whether the jail's delousing policy, which allegedly applied to all pretrial detainees, was reasonable under the Fourth Amendment could not be decided on a motion to dismiss. The court noted that the detainee who brought the action against a regional jail authority for alleged civil rights violations was not required to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA), where he was no longer an inmate at the time he filed suit. (West Virginia Regional Jail and Correctional Facility Authority, Western Regional Jail)

U.S. District Court
RETALIATION

Cummings v. Harrison, 695 F.Supp.2d 1263 (N.D.Fla. 2010). A Black Muslim state prisoner brought a civil rights action against a prison warden and correctional officers, alleging, among other things, that the defendants used excessive force against him in violation of the Eighth Amendment and retaliated against him, in violation of First Amendment, for submitting grievances. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether correctional officers' repeated verbal threats, including death threats, combined with physical assaults, against the Black Muslim prisoner caused the prisoner extreme psychological harm, and as to whether the officers maliciously and sadistically used force against the prisoner because he was black or because he practiced the Muslim faith. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the prison warden had the ability to remove the Black Muslim prisoner from the supervision of the correctional officer who was allegedly verbally and physically abusing him, but refused to do so, and denied the prisoner's request for protective custody. (Taylor Correctional Institution, Florida)

U.S. Appeals Court
EXHAUSTION
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Dillon v. Rogers, 596 F.3d 260 (5th Cir. 2010). A pretrial detainee, who was transferred first to a temporary jail and then to a state corrections facility after Hurricane Katrina damaged a parish correctional center, brought a § 1983 action. The detainee alleged that he was beaten and mistreated while at the temporary jail, resulting in hearing loss and other injuries. The district court dismissed the action for failure to exhaust administrative remedies. The detainee appealed. The appeals court vacated and remanded for further discovery. The court held that the record was not sufficiently developed to determine whether administrative remedies were "available" for detainee to exhaust at the state facility, requiring remand. (Jefferson Parish, Louisiana)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
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Fletcher v. Menard Correctional Center, 623 F.3d 1171 (7th Cir. 2010). A state prisoner subject to the Prison Litigation Reform Act's (PLRA) three strikes provision brought a civil rights action against a prison, warden, and various prison employees, alleging the defendants violated his federal constitutional rights by using excessive force to restrain him and by recklessly disregarding his need for medical attention. The district court dismissed the complaint for failure to pre-pay the filing fee, and a motions panel authorized the prisoner's appeal. The appeals court affirmed. The court held that that while the prisoner's allegation of excessive force satisfied the three strikes provision's imminent danger requirement, the prisoner failed to exhaust administrative remedies under the PLRA. The court noted that the prisoner had an administrative remedy under an Illinois regulation providing an emergency grievance procedure for state prisoners claiming to be in urgent need of medical attention. (Menard Correctional Center, Illinois)

<p>U.S. District Court EXHAUSTION PROCEDURES RETALIATION</p>	<p><i>Green v. Tudor</i>, 685 F.Supp.2d 678 (W.D.Mich. 2010). A state inmate brought a § 1983 action against four employees at a prison for claims arising from his access to a prison law library and the adequacy of the prison's food service. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate failed to exhaust administrative remedies prior to bringing his claim against an assistant librarian alleging denial of access to courts through a denied "call-out" request. The court found that the assistant librarian did not engage in retaliatory conduct against the inmate and did not deny the inmate equal protection. The court held that the assistant food service director did not coerce the inmate, an Orthodox Muslim, into participating in Jewish religious practices, and did not take any actions establishing a state religion, so as to violate the Establishment Clause of the First Amendment. The court held that the alleged denial by the prison's assistant food service director of adequate advance notice of meal substitutions, hot meals during non-daylight hours during a religious holiday, and adequate nutritional calories to the Muslim inmate was rationally related to legitimate governmental and penological interests of prison security and fiscal budgetary discipline, and thus the denials did not violate the inmate's First Amendment free exercise rights. The court noted that the inmate retained alternative means for practicing his Muslim faith, and granting requests for specialized diets would be expensive and would divert resources from other penological goals. (Muskegon Correctional Facility, Michigan)</p>
<p>U.S. District Court PLRA- Prison Litigation Reform Act RIGHT OF ACCESS EXHAUSTION</p>	<p><i>Hartry v. County of Suffolk</i>, 755 F.Supp.2d 422 (E.D.N.Y.2010). An inmate brought a § 1983 action against a sergeant and a county, alleging failure to protect him from harm and deliberate indifference to his health and safety. The district court denied the defendants' motion for summary judgment. The court held that the inmate's transfer from one county prison to another county prison deprived him of a meaningful opportunity to pursue his administrative remedies following an attack by another inmate, and therefore, his failure to exhaust administrative remedies prior to bringing his § 1983 action against the sergeant and the county was excused. The court noted that the inmate handbook permitted an inmate five days to file a grievance, and the inmate was transferred within two days of the attack. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate faced a real and significant threat of harm from other inmates, and whether the prison sergeant was aware of a substantial risk of harm to the inmate from other inmates. The court also found a genuine issue of material fact as to whether moving an inmate only in response to a direct threat, within or outside of the jail, was a reasonable protective measure. (Suffolk County Correctional Facility, New York)</p>
<p>U.S. Appeals Court EXHAUSTION PLRA-Prison Litigation Reform Act DUE PROCESS</p>	<p><i>Harvey v. Jordan</i>, 605 F.3d 681 (9th Cir. 2010). An inmate brought a suit alleging that prison officials' use of pepper spray to extract him from his cell during a building-wide search of all prisoners' cells constituted excessive force and that his right to due process was denied in connection with a disciplinary charge stemming from his refusal to comply with the search. The district court granted the defendants' motion to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate exhausted administrative process, as required by PLRA, for the claim that he was denied due process in connection with a disciplinary charge when prison officials purported to grant relief that resolved his grievance to his satisfaction, a hearing and access to a videotape. The court noted that the inmate was not required to appeal that decision. (Salinas Valley State Prison, California)</p>
<p>U.S. District Court RETALIATION</p>	<p><i>Jackson v. Raemisch</i>, 726 F.Supp.2d 991 (W.D.Wis. 2010). A Muslim inmate brought an action against correctional officials, alleging civil rights violations due to a prohibition against workplace prayer. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the claim brought under the Religious Land Use and Institutionalized Persons Act (RLUIPA) stemming from the defendants' alleged refusal to allow the inmate to pray in a kitchen facility, was moot, since only injunctive or declaratory relief was available under the statute, and the inmate no longer worked in the kitchen and was unlikely to return to work there. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether a correctional official issued a conduct report to the Muslim inmate because of a grievance he filed concerning the prohibition against workplace prayer. The court also found that summary judgment was precluded by genuine issues of material fact, regarding whether a correctional official directed her staff to take retaliatory action against the Muslim inmate because of a grievance he filed concerning the prohibition against workplace prayer. (Waupun Correctional Institution, Wisconsin)</p>
<p>U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act</p>	<p><i>Jones v. Mathai</i>, 758 F.Supp.2d 443 (E.D.Mich. 2010). A prisoner brought an action against several prison officials, including a prison doctor, alleging retaliation and deliberate indifference to his serious medical needs. The district court denied the doctor's motion to dismiss or for summary judgment. The court held that the doctor was not entitled to dismissal of the prisoner's claims alleging retaliation for failure to exhaust, where the doctor had filed two motions for summary judgment, a motion to dismiss, and a motion for reconsideration that all determined the prisoner had exhausted his claim under the requirements of the Prison Litigation Reform Act of 1995. (Deerfield Correctional Facility, Michigan)</p>
<p>U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act</p>	<p><i>Kasiem v. Switz</i>, 756 F.Supp.2d 570 (S.D.N.Y. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against the New York Department of Correctional Services (DOCS) and prison employees, alleging violations of his rights involving the defendants' purported failure to adequately treat his claimed hearing problems and related ear pain. The district court granted summary judgment for the defendants. The court held that the prisoner failed to exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action, where any grievances possibly covering his claims were never fully exhausted or became exhausted only months after the suit was filed. (Sullivan Correction Facility, New York)</p>

<p>U.S. Appeals Court EXHAUSTION PLRA-Prison Litigation Reform Act PROCEDURES DUE PROCESS</p>	<p><i>Little v. Jones</i>, 607 F.3d 1245 (10th Cir. 2010). A state prisoner, who was a Seventh Day Adventist, brought a § 1983 action against the Oklahoma Department of Corrections (ODOC) employees, alleging that employees violated his constitutional rights in denying him a vegan diet. The district court granted the defendants' motion to dismiss the complaint for failure to exhaust administrative remedies, and denied the prisoner's motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that, under the Oklahoma Department of Corrections (ODOC) grievance procedures, the Administrative Reviewing Authority (ARA) exceeded its authority when it rejected the prisoner's grievance appeal regarding his claim to a vegan diet as part of his religious practices because it contained multiple issues, thereby preventing the prisoner from completing the grievance process. According to the court, the prisoner's failure to exhaust his administrative remedies with regard to the vegan diet claim, in accordance with PLRA's exhaustion requirement, would be excused, and the prisoner could pursue that claim in his § 1983 action against ODOC employees. (Oklahoma Department of Corrections, Mack Alford Correctional Center)</p>
<p>U.S. District Court DUE PROCESS PROCEDURES</p>	<p><i>Lymon v. Aramark Corp.</i>, 728 F.Supp.2d 1222 (D.N.M. 2010). A former state prisoner brought an action against the New Mexico Department of Corrections (NMDOC), its secretary, prison officers, the private company that managed a prison kitchen, and two of the company's employees, alleging various constitutional claims and negligence under the New Mexico Tort Claims Act (NMTCA). The prisoner had sustained injuries from work he was required to perform in a kitchen, and he made allegations about the injuries and his subsequent treatment. The state defendants moved to dismiss. The district court granted the motion. The court held that no New Mexico Department of Corrections (NMDOC) policy or regulation made any provision for the state prisoner's liberty interest in a labor assignment or otherwise provided the prisoner with protection from corrections officers ordering him to perform work in a prison kitchen or protection from orders in contravention of a medical order. The court ruled that the prisoner's § 1983 procedural due process claim arising from injuries he allegedly sustained while performing kitchen work was precluded. According to the court, corrections officers' alleged misclassification and denial of a grievance process did not rise to the degree of outrageousness, or the magnitude of potential or actual harm, that was truly conscience-shocking, precluding the state prisoner's § 1983 substantive due process claims. The court noted that the state prisoner made no allegation that he contracted any disease while working in the prison kitchen, but only that he suffered a shoulder injury as the result of a heavy-lifting component of his work, thus precluding his § 1983 unconstitutional conditions claim against the New Mexico Department of Corrections (NMDOC) and its secretary. The court held that the prisoner did not personally suffer any injury as a result of a corrections officer's classification of prisoners for work duty, purportedly assigning inmates with known transmissible diseases to kitchen work, precluding the prisoner's claim for an alleged violation of federal public health policy. (Aramark Corporation, Central New Mexico Correctional Facility)</p>
<p>U.S. Appeals Court RETALIATION DUE PROCESS</p>	<p><i>Nelson v. Shuffman</i>, 603 F.3d 439 (8th Cir. 2010). A pretrial detainee resident of the Missouri Sexual Offender Treatment Center brought a § 1983 action against 13 treatment center officials, alleging violations of his constitutional rights. The district court granted summary judgment in favor of six of the 13 defendants. The remaining seven defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by genuine issues of material fact as follows: (1) as to whether the officials recklessly disregarded an objectively serious risk of harm to the pretrial detainee resident by placing him with a roommate who had a history of sexually assaulting vulnerable young males; (2) as to whether the pretrial detainee had a serious medical need and whether a treatment center official deliberately disregarded the need by failing to provide the psychological treatment she prescribed; (3) as to whether officials retaliated against the detainee resident for filing an abuse and neglect charge and several grievances complaining about treatment center officials' failure to provide him necessary psychological treatment; and (4) as to whether officials' transfer of the detainee resident to an unfinished ward that only housed one resident who was confined to shackles twenty-four hours a day was punitive and violated due process by imposing a punishment that had no legitimate institutional objective. (Missouri Sexual Offender Treatment Center)</p>
<p>U.S. Appeals Court EXHAUSTION PROCEDURES PLRA- Prison Litigation Reform Act</p>	<p><i>Parzyck v. Prison Health Services, Inc.</i>, 627 F.3d 1215 (11th Cir. 2010). A prisoner who was denied an orthopedic consultation for his continual and severe back pain brought a civil rights action to recover for prison officials' alleged deliberate indifference to his medical needs. The district court dismissed the complaint for failure to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner did not have to file new grievances addressing every subsequent act by prison official that contributed to the continuation of a problem already raised in an earlier grievance in order to exhaust his administrative remedies. The court noted that the prisoner had demonstrated "meticulous respect" for the corrections department's administrative grievance procedures. (Apalachee Correctional Institution, Florida)</p>
<p>U.S. Appeals Court EXHAUSTION PLRA-Prison Litigation Reform Act PROCEDURES</p>	<p><i>Reed-Bey v. Pramstaller</i>, 603 F.3d 322 (6th Cir. 2010). A state prison inmate brought a § 1983 action against the Michigan Department of Corrections, the health-management company that provided medical services for a prison, and several prison and company officials. The inmate alleged that the defendants violated his Eighth Amendment rights by denying him adequate medical care for a separated shoulder he suffered during a prison basketball game. The district court granted the defendants' motions for summary judgment and dismissal for the inmate's failure to exhaust administrative remedies. The inmate appealed. The appeals court reversed. The court held that the inmate properly exhausted administrative remedies as required under the Prison Litigation Reform Act (PLRA) with respect to his § 1983 claim that prison officials violated his Eighth Amendment rights, even though the inmate failed to identify the "names of all those involved" in the grievance as required by the prison's internal grievance policies. The court noted that the inmate invoked one complete round of the prison's three-step grievance procedure and the prison addressed the merits of the inmate's claim at each step of the process rather than defaulting the inmate's claim as procedurally barred. (Mound Correctional Facility, Michigan Department of Corrections, and Corrections Medical Services, Inc.)</p>

U.S. District Court
DUE PROCESS
RETALIATION

Robinson v. Danberg, 729 F.Supp.2d 666 (D.Del. 2010). An inmate brought a § 1983 action against 47 defendants, including various prison officials, alleging various claims arising from acts occurring while he was a pretrial detainee and sentenced inmate. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that a sergeant and a corporal sergeant “set up” the pretrial detainee in connection with a hearing on a razor incident, and that the detainee was told during a disciplinary hearing that the sergeant and corporal sergeant were going to make the detainee’s life miserable, were sufficient for the detainee to state a due process claim. The court also held that a retaliation claim was stated by allegations that the state prisoner received false charges, write-ups and accusations from prison officials, was placed in “the hole” or in isolation on numerous occasions, received numerous threats, was denied food and had foreign objects placed in his food. The inmate alleged that these actions were all in retaliation for exercising his right to file grievances, his statements about suing people, and making those on the outside aware of the prison conditions. The court held that these allegations, when construed liberally, set forth a chronology of events from which retaliation could be inferred.

According to the court, allegations that the pretrial detainee was denied dinner on several occasions, the toilet in his cell flooded and he was left in his cell for over seven hours, all of the detainee’s uneaten food was shaken on the cell floor while prison staff was collecting food trays, the detainee was placed in a cell with blood everywhere and nothing to be protected from exposure, he was intentionally awoken from sleep, was denied recreation, and was not given supplies to clean urine thrown under his cell door, were sufficient for the detainee to state a claim that his conditions of confinement were in violation of the due process clause of Fourteenth Amendment. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
RETALIATION

Rouser v. White, 707 F.Supp.2d 1055 (E.D.Cal. 2010). A state prisoner, who was a practicing Wiccan, brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against prison officials, alleging, among other things, that the officials retaliated against his filing of grievances and litigation arising out of the officials’ alleged failure to accommodate the practice of his religion. The prisoner moved for a preliminary injunction, seeking an order enjoining officials from taking his religious articles and requiring them to satisfy certain requirements with respect to his religious services. The district court granted the motion. The court held that the prisoner’s § 1983 claims were likely to succeed on their merits. According to the court, the prisoner demonstrated a causal connection between the officials’ actions and his treatment at a prison and that it was likely that the officials were violating his rights. The court noted that the alleged conduct that infringed upon the prisoner’s religious practice extended through decades, rendering it nearly impossible for the officials to show that their conduct, which, according to the officials, they had voluntarily ceased, could not be expected to start up again.

The prisoner asked the court to enjoin prison officials from taking his religious items, allow him to keep and maintain religious texts, allow him to obtain group Wiccan items prior to Wiccan group services, allow him access to an outdoor, nature-based religious area for Wiccan group services, and grant him access to a fire pit. The court found that the requested relief conformed with RLUIPA because the relief was narrowly drawn, extended no further than necessary to correct the harm requiring preliminary relief, and was the least intrusive means necessary to correct that harm. (California State Prison—Sacramento, Mule Creek State Prison and Pleasant Valley State Prison)

U.S. District Court
RETALIATION

Rupe v. Cate, 688 F.Supp.2d 1035 (E.D.Cal. 2010). A state prisoner brought an action against prison officials for violation of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials failed to accommodate his Druid religious practices and retaliated against him for protected activities. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner pled sufficient facts to state a claim against prison officials on a theory of supervisor liability under § 1983 by alleging that he wrote to the officials about violations of his rights, that the officials were “made completely aware of the inappropriate actions of their subordinates,” and that they “actively chose to be deliberately indifferent to these actions.” The court found that the prisoner’s claims for injunctive relief based on the California Department of Corrections’ (DOC) alleged systemic discrimination against those practicing the Pagan religion were not moot, even though he had been transferred from the prison where many of the alleged violations of his rights occurred, where he was still incarcerated in a prison run by the DOC. The court found that the prisoner stated claim for retaliation by prison officials for conduct protected by the Free Exercise Clause by alleging that he was strip-searched as harassment for writing letters to prison and government officials in which he complained about the lack of accommodations for his religion. The prisoner also alleged that officials conspired to place him in administrative segregation and ultimately to transfer him to requite his complaints about their previous adverse actions against him, and that the actions taken against him were motivated solely by the officials’ desire to inhibit his religious worship. The court found that the prisoner stated a claim against prison officials for violation of his right to equal protection by alleging that he and other Pagans were denied opportunities to practice their religion that were available to mainstream religions and that the officials engaged in a pattern of discrimination against Pagan practitioners. (Mule Creek State Prison, California Department of Corrections)

U.S. District Court
PLRA- Prison Litigation
Reform Act
RIGHT OF ACCESS
EXHAUSTION

Russo v. Honen, 755 F.Supp.2d 313 (D.Mass. 2010). A federal prisoner brought a § 1983 action against a sheriff and various medical officials, alleging withholding of necessary medical treatment in violation of the Eighth Amendment. The defendants filed a motion to dismiss or in the alternative for summary judgment. The district court denied the motion. The court held that genuine issue of material fact existed as to whether the federal prisoner was denied access to the inmate grievance forms required to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). (Plymouth County Correctional Facility, Massachusetts)

U.S. District Court
RETALIATION

Shariff v. Poole, 689 F.Supp.2d 470 (W.D.N.Y. 2010). A state prisoner who was a paraplegic brought a § 1983 action against current and former New York State Department of Correctional Services (DOCS) employees, alleging that the employees conspired and retaliated against him. The employees moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the prisoner failed to show that the employees acted with racial or related class-based discriminatory animus, as would support his claim that the employees conspired to interfere with his civil rights by denying him rights and privileges. The court held that the

alleged actions of the employees, including subjecting the prisoner who was paraplegic and who, as vice-chairman of the prisoners' liaison committee, had filed grievances against employees, to an excessive number of cell searches, filing false misbehavior reports, confiscating legal documents, verbally threatening the prisoner, and excessively pat frisking and searching the prisoner, amounted to adverse actions for the purposes of the prisoner's § 1983 First Amendment retaliation claim against the employees, although such actions did not necessarily amount to violations of the prisoner's constitutionally protected rights. The court held that summary judgment was precluded by a genuine issue of material fact existed as to whether a state correctional officer acted with retaliatory motive in confiscating an unfinished grievance of the prisoner who was vice-chairman of prisoners' liaison committee. (Five Points Correctional Facility, New York)

U.S. Appeals Court
PROCEDURES
RETALIATION
DUE PROCESS

Stanley v. Vining, 602 F.3d 767 (6th Cir. 2010). A prisoner filed a § 1983 action against prison officials, claiming deprivation of his constitutional rights by a prison guard who was allegedly reading the prisoner's legal mail in the prisoner's presence in his cell in violation of a prison regulation, and by issuing a prison misconduct charge against the prisoner after an exchange of angry words. The district court granted the defendants' motion to dismiss for failure to state a claim. The prisoner appealed. The appeals court affirmed. The court held that although the prisoner had a liberty interest in receiving his mail, under the First Amendment, the prisoner was not deprived of his procedural due process rights based on the prison guard allegedly violating a prison regulation by reading the prisoner's mail in the prisoner's presence in his cell. The court noted that the prisoner received a post-deprivation hearing, as part of the prison grievance procedure, which determined that the guard had not read mail in violation of regulation.

The court found that the prisoner's allegation that the guard issued a misconduct charge against him over their dispute that the guard allegedly read the prisoner's legal mail did not rise to the level of a valid § 1983 claim, where the prisoner failed to allege that the charge interfered in any way with his rights to counsel, access to courts, equal protection, or procedural due process. The court noted that the complaint stated no facts or theories from which the court could devise a plausible constitutional claim, and did not even divulge what the disposition of the charge was. According to the court, no constitutional provision flatly prohibits, as unlawful censorship, a prison from opening and reading a prisoner's mail, unless it can be shown that the conduct interferes with the prisoner's right to counsel or access to the courts, or violates his rights of equal protection or procedural due process. "We find no per se constitutional rule that such conduct automatically violates a broad, general rule prohibiting censorship, as our dissenting colleague seems to imagine. (Alger Maximum Correctional Facility, Michigan Department of Corrections)

U.S. District Court
DUE PROCESS
PROCEDURES
RETALIATION
INVESTIGATION

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel.

The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment.

The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. The court found that even if a correctional officers' captain failed to thoroughly investigate the alleged incident in which one officer threw urine and feces on the prisoner to wake him up, such failure to investigate did not violate the prisoner's due process rights, since the prisoner did not have due process right to a thorough investigation of his grievances. According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired.

The court held that there was no evidence that the state prisoner suffered any physical injury as result of an alleged incident in which a correctional officer spit chewing tobacco in his face, as required to maintain an Eighth Amendment claim based on denial of medical care.

The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether state correctional officers used excessive force against the prisoner in the course of his transport to a different facility. The court held that state correctional officers were not entitled to qualified immunity from the prisoner's § 1983 excessive force claim arising from his alleged beating by officers during his transfer to a different facility, where a reasonable juror could have concluded that the officers knew or should have known that their conduct violated the prisoner's Eighth Amendment rights, and it was clearly established that prison official's use of force against an inmate for reasons that did not serve penological purpose violated the inmate's constitutional rights. The inmate allegedly suffered injuries, including bruises and superficial lacerations on his body, which the court found did not constitute a serious medical condition.

The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Ward v. Rabideau, 732 F.Supp.2d 162 (W.D.N.Y. 2010). Jewish prison inmates at a state correctional facility brought a § 1983 action against prison officials, alleging their First Amendment rights were violated by the defendants' failure to properly accommodate their religious needs. The defendants moved for summary judgment. The district court denied the motion. The court found that summary judgment was precluded by genuine issues of material fact as to whether "special circumstances" existed so as to excuse the two inmates' failure to exhaust administrative remedies, pursuant to the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action against prison officials. The court held that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer treated Jewish prison inmates differently on account of their religion. The court also found a genuine issue of material fact as to whether cold alternative meals available in a state correctional institution violated the Jewish inmates' constitutional right to a kosher diet, pursuant to the inmates' rights to religious liberty under First Amendment. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether prison officials prevented Jewish inmates from having materials necessary to their worship, on the inmates' claim that the officials failed to make reasonable accommodation to their religious beliefs in violation of the First Amendment, by not providing a rabbi or religious materials in the correctional facility. (Groveland Correctional Facility, New York)

U.S. Appeals Court
PROCEDURES
RETALIATION

Watkins v. Kasper, 599 F.3d 791 (7th Cir. 2010). A state inmate who was a prison law clerk brought a § 1983 action against a prison law librarian, alleging retaliation for the inmate's exercise of his free speech rights. Following a jury verdict for the inmate, the district court denied the librarian's motions for judgment as a matter of law or for a new trial. The librarian appealed. The appeals court reversed and remanded with instructions. The court held that the inmate law clerk's speech that criticized prison library policies requiring that clerks not help other inmates prepare their legal documents and not store the clerks' personal legal materials in the library was not protected by the First Amendment. The court found that the speech had a negative impact on the prison librarian's legitimate interests in discipline and providing efficient library services, particularly since it amounted to advocacy on behalf of other inmates, and the inmate had an alternative means to express his complaints. The court also found that the inmate law clerk's oral complaint to the prison librarian about the placement of his personal materials in the library was not protected by his First Amendment right to free speech, where the complaint was made in a confrontational, disorderly manner. (Miami Correctional Facility, Indiana)

2011

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Amador v. Andrews, 655 F.3d 89 (2nd Cir. 2011). Current and former female inmates filed a class action § 1983 suit against several line officers employed at seven state prisons and various supervisors and other corrections officials, claiming that they were sexually abused and harassed by the line officers and that the supervisory defendants contributed to this abuse and harassment through the maintenance of inadequate policies and practices. The district court dismissed, and the inmates appealed. The appeals court dismissed in part, and vacated and remanded in part. The court held that the female inmates who made internal complaints, investigated by an Inspector General (IG), that sought redress only for the alleged actions of a particular corrections officer and did not seek a change in policies or procedures, failed to exhaust their internal remedies, as required by the Prison Litigation Reform Act (PLRA) to proceed in federal court on § 1983 claims of sexual abuse and harassment. But the court found that the female inmates' claim of a failure to protect was sufficient exhaustion with regard to a § 1983 class action litigation seeking systemic relief from alleged sexual abuse and harassment. (N. Y. Department of Correctional Services)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Annoreno v. Sheriff of Kankakee County, 823 F.Supp.2d 860 (C.D.Ill. 2011). A federal pretrial detainee brought a § 1983 action against a county sheriff, correctional officers, and others, alleging that the officers assaulted him while in their custody. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) prior to filing suit. According to the court, the detainee's submission of a "sick call slip," rather than an "inmate grievance form," regarding an alleged assault committed upon him by corrections officers, was inadequate to exhaust administrative remedies under PLRA, and thus the district court lacked jurisdiction over the detainee's § 1983 action. The court noted that sick call slips were submitted directly to medical department and not forwarded to administrative staff who received inmate grievance forms, the inmate handbook required that complaints be submitted in writing on an inmate grievance form, and the detainee knew that grievance forms were used in the facility and had filed multiple grievance forms prior to the incident in question. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. District Court
MONETARY
DAMAGES
RETALIATION

Barrington v. New York, 806 F.Supp.2d 730 (S.D.N.Y. 2011). A prisoner brought a § 1983 action against correctional officers and a state, alleging violation of his constitutional rights as the result of an assault from officers in retaliation for filing grievances about disciplinary actions taken against him. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the state was entitled to sovereign immunity. The court found that the prisoner's § 1983 excessive force suit against correctional officers in their individual capacities did not implicate a rule against double recovery, under New York law, despite the officers' contention that the prisoner had already won an excessive force suit in state court against the officers in their official capacities and now wanted "a second bite at the apple." The court noted that there was no court in which the prisoner could have brought both an excessive force claim under state law against the state and the officers in their official capacities and a § 1983 claim against the officers in individual capacities for which punitive damages were available. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's filing of a grievance was the motivating factor for the alleged assault by the correctional officers. (Green Haven Correctional Facility, New York)

U.S. District Court PLRA- Prison Litigation Reform Act EXHAUSTION	<p><i>Davis v. Correctional Medical Services</i>, 760 F.Supp.2d 469 (D.Del. 2011). A state inmate filed a § 1983 action alleging that prison medical officials failed to provide mental health treatment, failed to follow policies and procedures to prevent officers and other inmates from harassing him, and failed to provide adequate medical treatment for his broken nose. The district court granted the officials' motions to dismiss and for summary judgment. The court held that the failure of the prison's mental health administrator to speak to the inmate or to investigate his complaint regarding his treatment and his living conditions did not violate any recognizable constitutional right, as required to sustain the inmate's § 1983 claim against the administrator. The court held that the inmate adequately exhausted his administrative remedies under the Prison Litigation Reform Act (PLRA) regarding medical treatment for his fractured nose, as required to file suit under § 1983 in federal court regarding his treatment, even though he did not appeal the grievance resolution decisions, where the grievances were resolved in the inmate's favor.</p> <p>According to the court, prison medical officials were not deliberately indifferent to the inmate's fractured nose, in violation of the Eighth Amendment, where the officials took an x-ray two months after the incident, the inmate did not complain about his nasal condition for seven months, once he did, the condition was consistently monitored and evaluated on several occasions, and the inmate was approved for surgery, but he refused to undergo the procedure. (James T. Vaughn Correctional Center, Delaware)</p>
U.S. District Court PLRA- Prison Litigation Reform Act EXHAUSTION RETALIATION	<p><i>Hale v. Rao</i>, 768 F.Supp.2d 367 (N.D.N.Y. 2011). An inmate brought an action against prison officials alleging deliberate indifference to his serious medical needs, and alleging that the conditions of his confinement violated the Eighth Amendment. Prison officials moved for summary judgment. The district court granted the motion in part and denied in part. The court excused the state inmate's failure to exhaust administrative remedies prior to bringing the claim in federal court because prison staff had thrown out a grievance filled out by another inmate on the inmate's behalf, refused to provide the inmate with the materials needed to file another grievance, and threatened to physically assault him if he attempted to utilize the grievance procedure. The court noted that the inmate was illiterate and had a poor understanding of the grievance procedure. (Downstate Correctional Facility, New York)</p>
U.S. District Court RETALIATION	<p><i>Holmes v. Fischer</i>, 764 F.Supp.2d 523 (W.D.N.Y. 2011). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by subjecting him to non-random urinalysis drug testing, confining him in a special housing unit (SHU), and denying medical care. The defendants moved for a more definite statement, to strike the complaint, and to dismiss. The district court denied the motion. The inmate alleged that, while incarcerated in a special housing unit (SHU): (1) he was routinely cuffed from behind, aggravating left shoulder and leg conditions resulting from previous injuries, (2) he was subjected to continuous illumination in his cell, rendering it impossible to sleep; (3) officials interfered with the inmate grievance he attempted to file regarding constant SHU cell illumination; (4) he was denied dental floss; (5) he was denied, during winter months, proper boots, gloves, hat, and thermos; (6) he was exposed to feces thrown by mentally-ill inmates confined to SHU; (7) he was denied proper medical treatment and tests; and (8) he was subjected to urinalysis testing which so traumatized him as to cause physical harm. The court held that these allegations were sufficient to state claims under the Eighth Amendment for cruel and unusual punishment and deliberate indifference to necessary medical care. According to the court, the inmate's allegations that he was subjected to urinalysis based on reports from confidential informants whose credibility and reliability had not been confirmed, despite the complete absence of any history of drug use, and that two random urinalysis tests to which he was subjected were done to retaliate against him for filing inmate grievances regarding non-random urinalysis testing, were sufficient to state an unreasonable search claim under the Fourth Amendment. The court found that the inmate's allegation that, as a result of repeated non-random urinalysis drug testing to which he was subjected, he suffered physical harm, including insomnia, nausea, headaches, burning eyes, aggravation of an old gunshot wound, inability to exercise, and appetite loss, was sufficient to state a cruel and unusual punishment claim under the Eighth Amendment. (Elmira Correctional Facility, and Southport Correctional Facility, New York)</p>
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act PROCEDURES	<p><i>Johnson v. Florida Dept. of Corrections</i>, 826 F.Supp.2d 1319 (N.D.Fla. 2011). A hard-of-hearing inmate at a state prison, who had allegedly been denied the benefit of television and radio services provided to other inmates, filed suit against the state department of corrections seeking accommodation in the form of volume-boosting listening devices, and alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Equal Protection Clause of the Fourteenth Amendment. The defendant moved to dismiss. The district court denied the motion. The court held that even though the inmate was transferred to a different prison after filing grievances and prior to filing suit, he sufficiently exhausted his administrative remedies under PLRA, since officials had been alerted to his problem and had the opportunity to resolve it before being sued. The court noted that even though the prison to which the inmate had been transferred would require him to have different adaptive technology than the type which he had originally sought, his claim arose from the same continuing failure of the prison to provide him with access to television and radio audio. (Polk Correctional Institution, Florida)</p>
U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act RETALIATION	<p><i>McCullum v. California Dept. of Corrections and Rehabilitation</i>, 647 F.3d 870 (9th Cir. 2011). Inmates and a volunteer prison chaplain brought an action against the California Department of Corrections and Rehabilitation (CDCR) and others, challenging CDCR's paid chaplaincy program, and alleging retaliation for bringing such a suit. The defendants moved to dismiss and for summary judgment. The district court granted the motion to dismiss the inmates' claims in part, dismissed the chaplain's Establishment Clause claim for lack of standing, and granted summary judgment on the chaplain's remaining claims. The plaintiffs appealed. The appeals court affirmed. The appeals court held that the inmates' grievances failed to alert CDCR that inmates sought redress for wrongs allegedly perpetuated by CDCR's chaplaincy-hiring program, as required to exhaust under the Prison Litigation Reform Act (PLRA). According to the court, while the inmates' grievances gave notice that the inmates alleged the prison policies failed to provide for certain general Wiccan religious needs and free exercise, they did not provide notice that the source of the perceived problem was the absence of a paid Wiccan chaplaincy. But the court found that an inmate's grievance alleging he requested that the prison's administration contact and allow visitation by clergy of his own Wiccan faith, which was denied because his chaplain was not a regular paid chaplain, was sufficient to put</p>

CDCR on notice that the paid-chaplaincy hiring policy was the root cause of the inmate's complaint and thus preserved his ability to challenge that policy under PLRA. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
RETALIATION

Milligan v. Archuleta, 659 F.3d 1294 (10th Cir. 2011). A state inmate filed a § 1983 action alleging that prison officials took away his prison employment in retaliation for his grievance regarding his designation as a potential escape risk, and in violation of his equal protection rights. The district court dismissed the complaint on its own motion and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the district court erred in dismissing the equal protection claim, even though the complaint was deficient because it did not plead facts sufficient to show that the inmate's classification as an escape risk lacked a rational basis or a reasonable relation to a legitimate penological interest. According to the court, amendment of the complaint would not necessarily be futile, and the claim was not based on an indisputably meritless legal theory. The court noted that the fact that the state inmate did not have a constitutional right to employment did not foreclose his retaliation claim against the prison official arising from loss of his prison job after he filed a grievance. (Colorado Territorial Correctional Facility)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Morton v. Bolyard, 810 F.Supp.2d 112 (D.D.C. 2011). A federal prisoner, who was employed by the Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody, brought a Bivens action against various federal officials, alleging that the defendants denied him promotions and back pay for his UNICOR job, and denied him good time credit for vocational training received through UNICOR and educational training he took at his own expense through a correspondence course. The defendants moved to dismiss. The district court granted the motion. The court held that sovereign immunity barred the prisoner's claims against the officials in their official capacities and that the district court lacked personal jurisdiction over the officials in their individual capacities. The court found that the prisoner failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), even though the prisoner had filed an administrative remedy request at the institutional level, where the prisoner had failed to file an administrative remedy request at the regional and central office levels, and the regional and central office levels had the authority to provide relief or to take action in response to the complaint. (United States Penitentiary Hazelton, West Virginia, Federal Prison Industries)

U.S. Appeals Court
RETALIATION

Moton v. Cowart, 631 F.3d 1337 (11th Cir. 2011). A state inmate brought a § 1983 retaliation action against a correctional captain, alleging that the captain violated his First Amendment rights when she disciplined him for filing an inmate grievance and for speaking to her in a manner she found disrespectful. The district court granted summary judgment in favor of the captain. The inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by fact issues as to: (1) the causal relationship between the inmate's grievance and the discipline that the correctional captain imposed against the inmate; and, (2) the causal relationship between the inmate's statements and discipline. The court found that the inmate's statement to the correctional captain about contacting his attorney in response to the correctional captain's failure to respond to the inmate's grievances was not inconsistent with his prisoner status or with legitimate penological objectives, and thus it was entitled to free speech protection. (Florida Department of Corrections)

U.S. Appeals Court
RETALIATION

O'Bryant v. Finch, 637 F.3d 1207 (11th Cir. 2011). A state prisoner brought a § 1983 suit alleging that prison officials violated his due process rights during his prison disciplinary proceedings and retaliated against him for filing grievances. The district court granted the officials motion for summary judgment and the prisoner appealed. The appeals court affirmed. The court held that the prisoner received procedural due process in hearings in which he was found guilty of disciplinary violations, where the prisoner received a detailed written notice of the charges against him, and of his rights during the investigations and hearings, he had the opportunity to present evidence and witnesses, he received written statements of the findings against him and the evidence relied upon by the disciplinary panels, and he had rights to request staff assistance and to appeal the panels' decisions to the warden. The court found no evidence that prison officials were subjectively motivated to discipline the state prisoner because of his earlier grievances, in violation of the First Amendment. Rather, according to the court, officials would have taken the same disciplinary actions in the absence of the prisoner's protected activity, and even if some impermissible reason had entered into an official's decision-making process, the causal connection was severed, since the prisoner would have been disciplined anyway, as hearing panels concluded he committed charged conduct. (Holmes Correctional Institution, Florida)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Pauls v. Green, 816 F.Supp.2d 961 (D.Idaho 2011). A female pretrial detainee brought an action against a county, county officials, and a jail guard, alleging that she was coerced into having inappropriate sexual contact with the guard. The defendants moved to dismiss and for summary judgment, and the plaintiff moved to compel discovery and for sanctions. The district court granted the motions, in part. The court held that the detainee was not required to file grievances after being transferred to a state prison before filing her § 1983 action, in order to satisfy the administrative exhaustion requirement under the Prison Litigation Reform Act (PLRA). The court noted that the county jail grievance procedures were not available to detainees after they transferred, and the county did not offer any assistance to the detainee after learning of the alleged assaults. The court found that the detainee was entitled to the sanction of an adverse jury instruction against the county for the destruction of recordings of interviews conducted by police during the investigation of the county jail guard's contact with the detainee. (Adams County Jail, Idaho)

U.S. District Court
RETALIATION

Roseboro v. Gillespie, 791 F.Supp.2d 353 (S.D.N.Y. 2011). A federal prisoner brought a pro se Bivens action against two prison correction officers and a prison counselor, alleging violations of his due process rights, cruel and unusual punishment, and retaliation for filing prison grievances. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner could not prove that a prison counselor failed to process his visitor requests and filed a false incident report against him in retaliation for filing a grievance against a corrections officer, as required to establish a retaliation claim under the First Amendment, even if the

alleged retaliation occurred close in time to the filing of the grievance. The court noted that the prisoner presented no evidence that the counselor's conduct was motivated by an intent to retaliate, that she even knew about the grievance, or that the one month time for processing a visitor request was unusually long, and at least one visitor request was denied for the non-retaliatory reason that the visitor had a criminal record. (Metropolitan Correctional Center, New York City)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
DUE PROCESS
PROCEDURES

Troy D. v. Mickens, 806 F.Supp.2d 758 (D.N.J. 2011). Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJC), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation. The defendants filed a motion for summary judgment. The district court denied the motion. The court held that there was no evidence that a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities was educated about filing a form with a social worker as the procedure for filing an administrative grievance, as required for the procedure to be available to the delinquent to exhaust his § 1983 claims against JJC and mental health providers. The court also found that there was no evidence the New Jersey Juvenile Justice Commission (JJC) provided written notice to the juvenile delinquent housed at JJC facilities of the opportunity to appeal their disciplinary sanctions, which would have triggered the requirement that he appeal each sanction within 48 hours of notice, as required to exhaust administrative remedies. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJC facilities; (2) whether placing the juvenile delinquent housed in temporary close custody and special observation status implicated a liberty interest; (3) whether a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities had procedural due process protections available to him upon a change of status; (4) whether the juvenile delinquent had a liberty interest implicated in his transfer to a more restrictive placement; (5) whether the juvenile delinquent had sufficient procedural due process protections available to him upon transfer to a more restrictive placement; and (6) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers acted with malice or reckless indifference. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
RETALIATION

Tuckel v. Grover, 660 F.3d 1249 (10th Cir. 2011). A state prisoner filed a § 1983 lawsuit against two prison officials, alleging that he was beaten in retaliation for submitting a complaint through the prison grievance system. The district court granted summary judgment in favor of the defendants, and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that intimidation or threats by prison officials could render an administrative remedy unavailable under the Prison Litigation Reform Act's (PLRA) exhaustion provision. (Arkansas Valley Correction Facility, Colorado)

2012

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Akhtar v. Mesa, 698 F.3d 1202 (9th Cir. 2012). A state prisoner brought a § 1983 action against correctional officers, alleging deliberate indifference to his serious medical needs in connection with the officers' alleged failure to comply with the prisoner's medical orders, which required the prisoner to be housed in a ground floor cell. The district court dismissed the action and denied the prisoner's motion to alter or amend the judgment. The prisoner appealed. The appeals court affirmed and remanded. The court held that the district court abused its discretion by failing to consider arguments that directed the court to crucial facts showing he might have exhausted his administrative remedies, and in addition to being pro se, the prisoner was illiterate, disabled, and had limited English skills. The court found that the prisoner satisfied the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) prior to filing his § 1983 action against the correctional officers, where the prisoner filed grievances addressing the officers' alleged failure to comply with medical orders several months before filing the complaint. The court held that the prisoner stated a § 1983 Eighth Amendment claim against correctional officers for deliberate indifference to his serious medical needs. The prisoner alleged that he suffered from numerous medical conditions and was hearing and mobility impaired, that his medical orders stated that the prisoner was mobility impaired and had housing restrictions requiring a lower bunk, no stairs, and no triple bunk, and that the correctional officers knew of those medical orders, but failed to comply with them. (Mule Creek State Prison, California)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Albino v. Baca, 697 F.3d 1023 (9th Cir. 2012). A detainee in a county jail brought a § 1983 action against a sheriff, alleging failure to protect him against other inmates, deliberate indifference to his serious medical needs, failure to adequately train and supervise deputies, intentional infliction of emotional distress, and gross negligence. The district court granted summary judgment for the sheriff. The detainee appealed. The appeals court affirmed. The appeals court held that: (1) the sheriff, in asserting the detainee's failure to exhaust administrative remedies, met his burden of showing that a grievance procedure existed and was not followed; (2) jail officials did not affirmatively interfere with the detainee's ability to exhaust administrative remedies, as would provide a basis for excusing failure to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA); and

(3) the detainee failed to show that jail's grievance procedure was effectively unavailable to him, due to his lack of awareness of the grievance procedure. (Los Angeles County Sheriff's Department's, Main Jail, California)

U.S. District Court
PROCEDURES

Armstrong v. Brown, 857 F.Supp.2d 919 (N.D.Cal. 2012). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, plaintiffs moved for an order requiring officials to track and accommodate the needs of class members housed in county jails and to provide a workable grievance procedure. Following remand to allow the development of additional evidence, the prisoners and parolees filed a renewed motion. The district court granted the motion and entered an enforce order. The court held that: (1) officials' efforts to comply with ADA, the Rehabilitation Act, and prior orders were inadequate and ineffective on a system-wide level; (2) system-wide injunctive relief was appropriate; (3) district court would not abstain from exercising its jurisdiction over matters pertaining to county jails; (4) a stay of the prior order was not warranted; and (5) the district court would exercise its retained jurisdiction to enforce the injunction. The court held that state officials were obliged to ensure ADA-compliant conditions for prisoners and parolees that they housed under their own authority in county jails. (California Youth and Adult Corrections Authority, Board of Prison Terms, California Department of Corrections)

U.S. District Court
EXHAUSTION
RETALIATION

Brown v. Hannah, 850 F.Supp.2d 471 (M.D.Pa. 2012). An inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The officials filed a motion to dismiss and the district court granted the motion. The district court held that: (1) the inmate did not have a liberty interest in remaining free from disciplinary confinement; (2) placement in confinement was not an atypical and significant hardship; (3) the inmate did not have a constitutionally protected right in the prison setting to use inappropriate, disrespectful, and derogatory language to a prison official; (4) rejection of his grievance was not an attempt to frustrate his ability to pursue a lawsuit; and (5) allegations were insufficient to state a conspiracy claim. (State Correctional Institution, Huntingdon, Pennsylvania)

U.S. District Court
DUE PROCESS
RETALIATION

Covarrubias v. Wallace, 907 F.Supp.2d 808 (E.D.Tex. 2012). A state prisoner brought a pro se § 1983 action against prison guards and officials complaining of alleged violations of his constitutional rights, in connection with an alleged assault by guards and a subsequent disciplinary hearing. The district court held that: (1) picket officers could not be held liable under a supervisory liability theory for failing to intervene when the prisoner was subjected to pepper spray, where even if they had authority to intervene, they did not have a realistic opportunity to intervene; (2) the punishments imposed on the prisoner for assaulting a guard did not violate any due process liberty interest; (3) denial of the prisoner's grievance did not violate any due process liberty interest; and (4) the prisoner failed to state an Eighth Amendment claim for disregarding an excessive risk to his health or safety. But the court found that the prisoner's allegations, that corrections officers used excessive force against him in retaliation for requesting a supervisor and for attempts to informally resolve a complaint, stated § 1983 claims against the officers. The prisoner alleged that as he was being restrained, one officer fired a two- to three-second burst of pepper spray into his right eye, and the officers subsequently tackled him, using their elbows, knees, arms, and hands on his back, legs, arms, and face as they piled on him and pressed his face into the concrete. (Texas Dept. of Criminal Justice, Correctional Institutions Division, Beto Unit)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Davis v. Abercrombie, 903 F.Supp.2d 975 (D.Hawai'i 2012). Inmates brought a state court action against the governor of Hawai'i, the Director of the Hawai'i Department of Public Safety (DPS), and the private manager of a correctional facility in Arizona at which they were housed, seeking declaratory relief that the defendants violated their rights to free exercise of their religion by depriving them of their prayer objects. The action was removed to federal court. The inmates moved for a preliminary injunction preventing the defendants from exercising the policies that infringed on their right to exercise their religion. The district court denied the motion. The court held that one inmate failed to exhaust his prison administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing the action. After submitting an informal resolution form, the inmate did not obtain the final recommendation from the warden or the administrative duty officer on his damaged property claim before initiating the grievance process under a prison policy, and the inmate did not appeal denial of his formal grievance. The court found that the correctional facility's policy, prohibiting the inmate from possessing his prayer object, a kukui nut, and requiring him to donate it to charity, destroy it, or send it out of the institution, substantially burdened his religious exercise under RLUIPA. (Hawaii Department of Public Safety, Corrections Corporation of America, Saguaro Correctional Center, Arizona, and Red Rock Correctional Center, Arizona)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Forter v. Geer, 868 F.Supp.2d 1091 (D.Or. 2012). A state inmate, who was a member of the Christian Identity Faith and proceeding pro se, brought a § 1983 action against department of corrections (DOC) employees, alleging violations of the First and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants filed a motion to dismiss and for summary judgment. The district court granted the motions. The court held that the inmate did not file grievances for most claims, even though such procedures were available to him, and he did not appeal those grievances that he did file, and therefore failed to exhaust his administrative remedies under the provisions of the Prison Litigation Reform Act of 1995. According to the court, prison officials withholding of certain religious pamphlets from the mail of the inmate, was validly and rationally connected to a legitimate interest in ensuring order and safety, for the purposes of the inmate's § 1983 claim alleging that the withholding violated his First Amendment free exercise and Fourteenth Amendment equal protection rights. The court noted that the pamphlets contained racially inflammatory material and that the prison population was racially mixed. (Oregon Department of Corrections)

U.S. Appeals Court
RETALIATION

Gomez v. Randle, 680 F.3d 859 (7th Cir. 2012). A state inmate filed a § 1983 action alleging excessive force, deliberate indifference to his serious medical condition, and retaliation for filing a grievance. After appointing counsel for the inmate and allowing him to proceed in forma pauperis, the district court granted an attorney's motion to withdraw and dismissed the case. The inmate appealed. The appeals court affirmed in part, reversed in part, and

remanded. The court held that the statutory period for the inmate to file a § 1983 action alleging that an unidentified corrections officer who fired two rounds from shotgun into the inmate population violated an Eighth Amendment's prohibition against excessive force was tolled while the inmate completed the administrative grievance process. The court held that the issue of when the inmate completed the prison's grievance process with regard to his claim involved fact issues that could not be resolved on a motion to dismiss. The court found that the inmate's allegations that he suffered a shotgun wound that caused excessive bruising and bleeding, that prison officials waited four days before treating his wound, and that he experienced prolonged, unnecessary pain as result of a readily treatable condition, were sufficient to state a claim for deliberate indifference to his serious medical condition, in violation of the Eighth Amendment. The court found that the inmate's allegations that he used the prison's grievance system to address his injury and lack of treatment he received following his injury, that he was transferred to a correctional center where he had known enemies when he refused to drop his grievance, and that there was no other explanation for his transfer, were sufficient to state a claim of retaliation in violation of his First Amendment right to use a prison grievance system. (Illinois Department of Corrections, Stateville Correctional Center)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Gonzalez v. Seal, 702 F.3d 785 (5th Cir. 2012). A state prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action against employees of a department of corrections (DOC), alleging harassment, excessive force, denial of medical care, denial of due process, and assault and battery. After denying the employees' motion for summary judgment, the district court denied the employees' motion for reconsideration. The employees appealed. The appeals court reversed and remanded, finding that the district court did not have the discretion to waive the pre-filing requirement of exhausting administrative remedies under the Prison Litigation Reform Act (PLRA). The court noted that the prisoner exhausted administrative remedies after his lawsuit was underway, but PLRA required exhaustion to occur prior to filing. (Louisiana Department of Corrections)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Jackson v. Gandy, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and such right was clearly established at the time of the officers' alleged misconduct. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner exhausted his administrative remedies regarding the excessive force claim against corrections officials in accordance with the requirements of the Prison Litigation Reform Act (PLRA). (N.J. Department of Corrections, Bayside State Prison)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Johnson v. District of Columbia, 869 F.Supp.2d 34 (D.D.C. 2012). A District of Columbia prisoner brought a § 1983 action against the District and a correctional facility, alleging violations of his Eighth Amendment rights, as well as various common-law torts, including negligence and assault and battery. The District filed a motion to dismiss or, in the alternative, for summary judgment. The district court granted the motion. The court held that the prisoner's alleged inability to read and mental retardation did not prevent him from accessing the grievance process, and prison staff's failure to inform the prisoner of the grievance process did not excuse his failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA). (District of Columbia Central Detention Facility)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Johnson v. Killian, 680 F.3d 234 (2nd Cir. 2012). A federal prisoner brought an action against a warden, prison rabbi, and prison chaplain alleging violation of his rights under the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court vacated and remanded, finding that the prisoner exhausted his administrative remedies. According to the court, the prisoner's grievance challenging the prison's limitations on congregational prayer at the prison, which was limited to only one time a day, five days a week, in a chapel, was sufficient to exhaust his administrative remedies, under the Prison Litigation Reform Act (RFRA), with respect to the continuing limitation on congregational prayer at the prison following a warden's replacement. According to the court, the grievance provided prison administration an opportunity to resolve the same problem that would continue intermittently until the lawsuit was filed, and issues raised in the lawsuit regarding the alleged inadequacy of spaces and times allotted for congregational prayer were identical to issues exhausted in the grievance. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
DUE PROCESS
EXHAUSTION

Johnston v. Maha, 845 F.Supp.2d 535 (W.D.N.Y. 2012). A pretrial detainee brought a § 1983 action against a county sheriff, employees of a county jail, and others, alleging, among other things, violations of his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to due process. The district court granted the defendants' motion for summary judgment, and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded for further proceedings. On remand, the district court held that: (1) a fact issue as to whether a correctional officer assaulted the detainee precluded summary judgment on the detainee's Eighth Amendment claim; (2) summary judgment was precluded by fact issue as to whether the detainee was twice placed in isolation as a form of punishment without being given advance notice or opportunity to be heard; and (3) summary judgment was precluded by a fact issue as to whether the detainee exhausted administrative remedies as to the claim that a correctional officer placed him in an isolation cell without prior notice. (Genesee County Jail, New York)

U.S. Appeals Court
RETALIATION

King v. Zamirara, 680 F.3d 686 (6th Cir. 2012). A state prisoner sued several corrections employees under § 1983 for violating his First Amendment rights when they transferred him to an increased security level facility in retaliation for his participation in a state-court class action against corrections officials regarding inmate property, as well as for his assistance to other inmates in filing grievances. The district court entered judgment in favor of the defendants, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that a causal connection existed between the adverse action in increasing the prisoner's security level and the prisoner's purportedly disruptive First Amendment protected conduct, and that certain officials failed to show by a preponderance of the evidence that they would have taken the same action absent the protected conduct. The court found that a deputy warden could be held liable on the prisoner's § 1983 First Amendment retaliation claim, where her memo complaining about the prisoner's behavior was the actual and proximate cause of the increase in the prisoner's security level, and where she helped execute the order increasing the prisoner's security level with the knowledge that it was intended to retaliate for the prisoner's protected conduct. According to the court, the transfer coordinator was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his editing of the prisoner's security screen to replace the initial notation with the notation that the prisoner was manipulative, where there was no showing that he knew or should have known that his superior's order to do so was meant to retaliate for the prisoner's protected conduct a month earlier. The court held that an assistant deputy warden was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his signing a backdated security screen approving the prisoner's transfer to the increased security facility, where he neither knew or should have known that he was implementing punishment for the prisoner's exercise of his protected rights. (Michigan Department of Corrections, Brooks Correctional Facility, Chippewa Correctional Facility)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
RETALIATION

Morrison v. Parmele, 892 F.Supp.2d 485 (W.D.N.Y. 2012). A state prisoner brought a § 1983 action against corrections officers, alleging that his constitutional rights were violated while he was incarcerated, when officers assaulted him in retaliation for his complaints that he was being sexually assaulted by another inmate, and filed a false misbehavior report against him. The officers moved for summary judgment. The district court granted the motion, holding that the prisoner failed to show that special circumstances excused his failure to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). (Groveland Correctional Facility, New York)

U.S. Appeals Court
EXHAUSTION

Moussazadeh v. Texas Dept. of Criminal Justice, 703 F.3d 781 (5th Cir. 2012). A Jewish state prisoner brought an action against the Texas Department of Criminal Justice, alleging that the defendant denied his grievances and requests for kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Texas Religious Freedom Restoration Act. The district court entered summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded. The court held that the state Jewish prisoner exhausted his administrative remedies with respect to his claim that a prison's failure to provide him with kosher meals violated RLUIPA, where the prisoner went through the state's entire grievance process before filing suit. The court found that sufficient evidence established that the prisoner's religious beliefs were sincere, as required to support a claim against state's department of criminal justice for violation of RLUIPA, where the prisoner stated that he was born and raised Jewish and had always kept a kosher household, the prisoner offered evidence that he requested kosher meals from the chaplain, kitchen staff, and the department, and while at another prison, he ate kosher meals provided to him from the dining hall. The court noted that the prisoner was harassed for his adherence to his religious beliefs and for his demands for kosher food, and that the department transferred the prisoner for a time so he could receive kosher food. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
RETALIATION

Patel v. Moron, 897 F.Supp.2d 389 (E.D.N.C. 2012). A federal prisoner brought a *Bivens* action against prison officials, alleging, among other things, deliberate indifference to his medical needs in violation of the Eighth Amendment, violation of due process, retaliation in violation of the First Amendment, and denial of access to courts. The defendants moved to dismiss for failure to state a claim and for a protective order and stay, and the prisoner moved for a temporary restraining order, for a continuance to permit discovery, and to strike portions of the defendants' motion to dismiss. The district court held that: (1) the prisoner was not responsible for failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA); (2) the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim; (3) the prisoner's allegations were sufficient to state a due process claim that he was placed in solitary confinement in violation of the Bureau of Prison's regulations and without having a legitimate investigation or a pending disciplinary charge; and (4) the allegations were sufficient to state a claim of retaliation in violation of the First Amendment. According to the court, prison officials' refusal to provide grievance forms and interference with the prisoner's efforts to exhaust administrative remedies did not violate the prisoner's First Amendment right of access to courts. (Federal Correctional Center in Butner, N.C., and Rivers Correctional Institution, operated by GEO Group, Inc)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Rahim v. Holden, 882 F.Supp.2d 638 (D.Del. 2012). A state prisoner, proceeding pro se and in forma pauperis, brought an action against prison officials, alleging violations of his due process rights related to his parole. The officials moved for dismissal. The district court denied the motion. The court held that a grievance procedure was unavailable to the state prisoner with regard to claims against prison officials as to alleged Fourteenth Amendment due process violations related to his parole, and therefore, the prisoner was excused from the Prison Litigation Reform Act (PLRA) requirement to exhaust administrative remedies. The prisoner was denied parole, which he believed was for arbitrary and constitutionally impermissible reasons, but instructions for filing a grievance specifically stated that parole decisions were non-grievable. The court noted that another form indicated he could appeal a parole decision to the Board of Parole by writing a letter to the Board, and he wrote letters to Board. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
RETALIATION

Starr v. Moore, 849 F.Supp.2d 205 (D.N.H. 2012). A state prisoner brought an action against a prison employee and others, alleging First Amendment retaliation and violation of his Eighth Amendment rights, in connection with employee's alleged conduct of telling other inmates that they were no longer receiving special meals on holidays as a result of a prior lawsuit filed by prisoner. The prisoner moved to exclude evidence of his prior lawsuits and grievances. The district court held that evidence of the prisoner's subsequent grievances and lawsuits against prison employees was relevant and that alleged prior statements by the employee, blaming the prisoner for a prison policy of no longer providing special meals to prisoners on holidays, were admissible as prior bad acts. (Northern New Hampshire Correctional Facility)

U.S. Appeals Court
EXHAUSTION
RETALIATION

Surles v. Andison, 678 F.3d 452 (6th Cir. 2012). A state inmate filed a § 1983 action alleging that prison officials had confiscated his legal papers and computer disks on multiple occasions, damaged or destroyed legal and religious papers and property, taken actions to deprive him of access to courts, violated his First Amendment rights, retaliated against him by filing false misconduct charges and transferring him to other prisons, and conspired against him to violate his rights. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the state inmate exhausted his administrative remedies, and whether prison officials prevented the inmate from filing grievances and exhausting his administrative remedies. (Michigan Department of Corrections, Gus Harrison Correctional Facility)

U.S. District Court
RETALIATION

Vogelfang v. Capra, 889 F.Supp.2d 489 (S.D.N.Y. 2012). A female state inmate filed a pro se § 1983 action against a prison's correction officers, officials, and medical staff, asserting 25 claims contesting the conditions of her confinement and the conduct of the staff. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated due process claims based on insufficient notice of a disciplinary hearing and on the inmate's allegedly improper removal from a disciplinary hearing. The court held that the inmate stated a First Amendment retaliation claim under § 1983 against a male prison correction officer by alleging that the officer had written a false inmate misbehavior report (IMR) against her three days after she had filed a grievance against him for performing a degrading sexual act in front of her, and that because of the false report she had been forced to spend three months in the prison's special housing unit (SHU). (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
RETALIATION

Watson v. Carter, 668 F.3d 1108 (9th Cir. 2012). A state inmate brought a pro se § 1983 action against prison officials, alleging violations of his federal constitutional rights and Nevada laws. The district court dismissed the complaint with prejudice pursuant to the in forma pauperis (IFP) statute, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded with instructions. The court held that the humiliation that the state inmate suffered during an alleged incident did not rise to the level of severe psychological pain as required to state an Eighth Amendment claim. The inmate alleged that a correctional officer entered the inmate's cell while the inmate was on the toilet and, while the inmate was still on the toilet, rubbed his thigh against inmate's thigh and smiled in sexual manner, then left the cell laughing. The court found that the inmate sufficiently alleged a First Amendment retaliation claim against a correctional officer and an associate warden by alleging that he engaged in protected conduct by filing grievances against the officer and alleging: (1) that the officer and the associate warden took adverse actions against him, including filing of a false disciplinary charge against him, placing him in administrative segregation, and telling lies that resulted in denial of his parole, and (2) that such adverse actions were taken shortly after, and in retaliation for, the filing of grievances, and that the adverse actions, which involved more than minimal harms, had no legitimate penological reason.

The court held that the inmate sufficiently alleged a First Amendment retaliation claim against a correctional officer by asserting that he had filed grievances against the officer, who allegedly refused to give him his breakfast, that the officer mentioned grievances during same interaction in which the officer refused to give the inmate his breakfast, that the officer's conduct was retaliatory, and that the inmate also asked during the same interaction to file an additional grievance about the denial of breakfast. (Nevada State Prison)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Way v. Johnson, 893 F.Supp.2d 15 (D.D.C. 2012). A District of Columbia inmate brought an action against wardens, an investigator, federal agencies, and other officials, alleging failure to investigate, and that his removal from a drug treatment program was discrimination based on his homosexuality and HIV-positive status. The district court granted the defendants' motion to dismiss. The court held that the inmate failed to exhaust administrative remedies in either of the two prisons in which he was housed as to removal from the drug treatment program or a change of housing, as required by the Prison Litigation Reform Act (PLRA), where the inmate did not file any grievance in the first prison, and only filed an informal grievance form at the second prison. The court noted that the inmate did not appeal upon the response from the warden at the second prison. (United States Parole Commission, Secure Residential Treatment Program, Court Services and Offender Supervision Agency for the District of Columbia)

U.S. Appeals Court
RETALIATION

Wood v. Beauclair, 692 F.3d 1041 (9th Cir. 2012). A male state prisoner filed a civil rights action alleging sexual abuse by a female prison guard in violation of the First, Fourth, and Eighth Amendments. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the prisoner established non-consent; (2) sexual abuse of the prisoner by a prison guard constituted malicious and sadistic use of force; (3) the sexual assault on the prisoner by the prison guard was deeply offensive to human dignity and was completely void of penological justification; (4) supervisory prison officials were not on notice that the prison guard presented a substantial risk to the prisoner through sexual abuse; and (5) prison officials did not retaliate against the prisoner for filing a grievance. According to the court, the prisoner established non-consent for purposes of surviving summary judgment, where the prisoner and guard were in a consensual relationship that involved hugging and kissing, then they were involved in a disagreement and

the prisoner told the guard to “back off” and that they had to “stop” seeing each other for a while, and then the initial sexual encounter that gave rise to the action occurred. (Idaho Correctional Institution of Orofino)

2013

U.S. Appeals Court
PROCEDURES
RIGHT OF ACCESS

Armstrong v. Brown, 732 F.3d 955 (9th Cir. 2013). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, the plaintiffs moved for an order requiring officials to track and accommodate the needs of the class members housed in county jails and to provide a workable grievance procedure. The prisoners and parolees filed a renewed motion, which the district court granted. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that: (1) Amendments to the California Penal Code relating to the legal custody of parolees did not relieve officials of responsibility for the discrimination suffered by disabled parolees housed in county jails, past and present, or of their obligation to assist in preventing further Americans with Disabilities Act (ADA) violations; and (2) orders requiring officials to track and accommodate the needs of disabled prisoners and parolees housed in county jails and to provide a workable grievance procedure were consistent with the Americans with Disabilities Act (ADA) and the Rehabilitation Act and did not infringe on California's prerogative to structure its internal affairs. (California Department of Corrections and Rehabilitation)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Brown v. Massachusetts, 950 F.Supp.2d 274 (D.Mass. 2013). An inmate brought an action under § 1983 for deliberate indifference to his health, against corrections facility officers and a superintendent. The officers and superintendent moved to dismiss. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate's complaints about another inmate who had violent tendencies being placed in his cell, and corrections officers' refusal to move him, were able to be grieved within the meaning of the provision of the Prison Litigation Reform Act (PLRA) that required the exhaustion of administrative remedies for grievable complaints. According to the court, summary judgment was also precluded by a genuine issue of material fact as to whether the corrections officers were aware they exposed the inmate to a serious risk of harm by placing another inmate who had violent tendencies in his cell, and by refusing to separate the two after the first inmate explained to the officers that he feared for his safety. Summary judgment was also precluded due to fact issues as to whether the inmate's complaint to the corrections officers that he did not feel safe with another inmate who had been placed in his cell, would trigger the inmate's clearly established right to be free from violence at the hands of other prisoners. (Essex County Corrections Facility, Massachusetts)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
RETALIATION

Childs v. Miller, 713 F.3d 1262 (10th Cir. 2013). A state prisoner brought a § 1983 action alleging prison employees retaliated against him for exercising his federal constitutional right to file administrative grievances about his medical care. The district court dismissed the action for failure to state a claim. The prisoner appealed. The appeals court affirmed. The appeals court held that the defendant had three strikes under the Prison Litigation Reform Act's (PLRA) in forma pauperis provision, and that dismissal of a complaint as repetitive and an abuse of process constituted a strike under the PLRA's in forma pauperis provision. (Lawton Correctional Facility, Oklahoma)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Cooke v. U.S. Bureau of Prisons, 926 F.Supp.2d 720 (E.D.N.C. 2013). Detainees who used wheelchairs and who were civilly committed at a federal corrections facility as sexually dangerous persons filed suit, seeking injunctive relief against the United States Bureau of Prisons for its alleged failure to accommodate their disabilities in violation of the Architectural Barriers Act (ABA), the Rehabilitation Act, the Religious Freedom Restoration Act (RFRA), and the First and Fifth Amendments. The government moved to dismiss and for summary judgment, and the detainees moved for discovery and to deny the government's motions. The district court granted the motions in part and denied in part. The court found that although the detainees failed to exhaust administrative remedies prior to filing suit under the ABA, the detainees were not “prisoners” as defined by the Prison Litigation Reform Act (PLRA) and thus did not have to exhaust administrative remedies before filing suit. The court found that the detainees, by alleging that, unlike detainees without disabilities, they could not access the prison's religious library or an outdoor pagan worship area, stated claims under the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) in their action seeking injunctive relief against the Bureau of Prisons for failing to accommodate their disabilities. The court held that the detainees failed to state a claim for a violation of the constitutional right to privacy. According to the court, even assuming that the detainees had a limited constitutional right to privacy in medical treatment, the inmates alleged that the prison medical facility had no private, wheelchair-accessible examination room, but did not allege harm from the use or disclosure of their medical information. (Butner Federal Correctional Complex, North Carolina)

U.S. District Court
DUE PROCESS
PROCEDURES

Eason v. Frye, 972 F.Supp.2d 935 (S.D.Miss. 2013). A pretrial detainee brought a pro se § 1983 action against an officer and a sheriff, alleging that the officer used excessive force by releasing his canine while responding to a fight between the detainee and another inmate, and that he did not receive immediate medical attention after the incident. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the detainee failed to allege that the sheriff was personally involved in the dog bite incident, as required for § 1983 liability; (2) the officer did not use excessive force; (3) prison officials were not deliberately indifferent to the detainee's serious medical needs where there was no evidence that the officials refused to treat the detainee, ignored his complaints, or intentionally treated him incorrectly; (4) the detainee failed to state a § 1983 failure to train or supervise claim; (5) the sheriff was entitled to qualified immunity from the failure to train claim, where the detainee made no specific allegations about how the sheriff was unreasonable in his training and supervising methods; and (6) the detainee could not maintain a claim for mental or emotional suffering. The court noted that the detainee refused to stop fighting when the officer ordered him to stop, thus causing an obvious threat

to security. In response, the officer applied the amount of force necessary to restore order on the tier, and as soon as the detainee went to the ground and stopped fighting, the officer ordered the dog to release its grip. The detainee suffered a minor injury when he was bitten by the dog. According to the court, the detainee made no specific allegations regarding how the training and supervision program at the detention facility was inadequate or defective, he contended that his numerous complaints and grievances went unanswered but provided no evidence of inadequate training or supervision, and he made no allegation of an official policy that caused the allegedly inadequate training and supervision. (Harrison County Adult Detention Center, Mississippi)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Fluker v. County of Kankakee, 741 F.3d 787 (7th Cir. 2013). An inmate and his wife filed a § 1983 action against a county and the county sheriff's office to recover for injuries the inmate suffered when a correctional officer who was driving a jail transport vehicle was required to brake suddenly, causing the inmate to hurtle forward and hit his head on a metal divider. The district court granted summary judgment for the defendants. The plaintiffs appealed. The appeals court affirmed. The appeals court held that the district court had the ability, in the interests of judicial economy and finality, to address the merits of the suit once it determined that the inmate had not exhausted his remedies under the Prison Litigation Reform Act (PLRA). (Kankakee County, Jerome Combs Det. Center, Illinois)

U.S. District Court
DUE PROCESS
PROCEDURES

Gray v. Cannon, 974 F.Supp.2d 1150 (N.D.Ill. 2013). State inmates brought an action against prison officials, alleging that the officials' refusal to let them receive mail that included photographs depicting nudity and sexual activity violated the Free Speech Clause of the First Amendment, and that grievance procedures for challenging the refusals violated the Due Process Clause of the Fourteenth Amendment. The district court granted the officials' motion for summary judgment. The court held that a state prison regulation preventing inmates from obtaining nude or sexually explicit photographs was reasonably related to legitimate penological interests, and thus did not violate the inmates' First Amendment rights. The court noted that: (1) the regulation was expressly aimed at protecting prison security; (2) the regulation permitted withholding reading materials only if it furthered interests in security, good order, or discipline, and there existed a valid and rational connection between the regulation and prison security; (3) the prison left open alternative means of exercising the restricted right by permitting inmates to receive a wide range of publications; (4) the restrictions fell within the broad limits of deference to prison officials regarding what was detrimental to security; and (5) the inmates did not point to an alternative that fully accommodated inmates' rights at a de minimus cost to valid penological interests. The court found that there was no evidence regarding how the state prison's grievance and appeal procedures operated, as required to support the inmates' claim that they were provided with insufficient opportunities to challenge prison's rejections of sexually explicit photographs and publications sent to them, in violation of due process. (Stateville Correctional Center, Illinois)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Lineberry v. Federal Bureau of Prisons, 923 F.Supp.2d 284 (D.D.C. 2013). A federal prisoner brought an action against the Bureau of Prisons (BOP) and prison official under the Federal Tort Claims Act (FTCA) and Bivens, alleging he was denied access to the postal service in violation of his First Amendment rights. The district court granted the defendants' motion to dismiss. The court held that the prisoner's admitted failure to submit a claim to the Bureau of Prisons prior to filing his lawsuit under the Federal Tort Claims Act (FTCA) alleging BOP's mail regulations violated his First Amendment rights, deprived the district court of subject matter jurisdiction. According to the court, the prisoner's allegations that neither his counselor nor his unit manager provided him the appropriate form for submitting a formal inmate grievance, and that without access to the first step of the process, he could not have been expected to complete the process, were sufficient to allege that circumstances rendered administrative remedies effectively unavailable, such as would excuse the prisoner from exhausting his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). The court found that neither the requirement of a mailing label generated by the Bureau of Prisons' (BOP) mail system, nor the return of mail lacking such a label, violated the prisoner's First Amendment rights, and the prisoner provided no factual allegations to support his conclusory claims that the system denied him access to the press, the establishment or exercise of religion, and peaceable assembly. (Federal Correctional Institution in Texarkana, Texas)

U.S. Appeals Court
RETALIATION

Mays v. Springborn, 719 F.3d 631 (7th Cir. 2013). A former state prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleging retaliation for his complaints about the searches, denial of his request for a dietary supplements which he considered to be religious necessities, inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated the judgment with respect to the strip searches, and remanded. On remand, the district court entered judgment, upon a jury verdict, in favor of the officials as to the strip search claims, and the prisoner again appealed. The appeals court reversed and remanded. The appeals court held that: (1) even if there was a valid penological reason for the strip searches conducted on a prisoner, the manner in which the searches were conducted was itself required to pass constitutional muster, and (2) a jury instruction requiring the prisoner to negate the possibility that strip searches would have occurred even if there had been no retaliatory motive was plain error. (Stateville Correctional Center, Illinois)

U.S. District Court
EXHAUSTION
PROCEDURES
PLRA-Prison Litigation
Reform Act

Munson v. Gaetz, 957 F.Supp.2d 951 (S.D.Ill. 2013). A Buddhist inmate brought a § 1983 action against prison officials, alleging failure to provide him with an adequate diet, deliberate indifference to his serious medical needs, and violations of his right to free exercise of religion. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the officials were not aware that feeding the inmate a soy-rich diet posed a substantial risk of serious harm to the inmate, and therefore, the officials were entitled to qualified immunity from the inmate's § 1983 claim alleging violations of the Eighth Amendment. The court found that there was no evidence that a vegetarian diet containing soy was nutritionally inadequate, as required for the Buddhist inmate's § 1983 claim alleging violations of his First Amendment free exercise rights. The court held that the Buddhist inmate had administratively exhausted his claims that a high-soy diet fed to him

violated the Eighth Amendment and his First Amendment free exercise rights, where he had submitted grievances about the diet to the grievance office, he wrote to a warden and an assistant warden regarding his grievances, and the prison officials did not respond to the grievances. (Menard Correctional Center, Illinois)

U.S. District Court
RETALIATION

Pen a v. Greffet, 922 F.Supp.2d 1187 (D.N.M. 2013). A female former state inmate brought a § 1983 action against a private operator of a state prison, the warden, and corrections officers, alleging violation of her civil rights arising under the Fourth, Eighth, and Fourteenth Amendments, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate's complaint stated claims against the operator and the warden for violations of the Eighth and Fourteenth Amendment, and for First Amendment retaliation. The inmate alleged that the operator and the warden engaged in practices of placing inmates who reported sexual abuse in segregation or otherwise retaliating against them, violating its written policies by failing to report allegations of prison rape to outside law enforcement, failing to conduct adequate internal investigations regarding rape allegations, and offering financial incentives to prison employees for non-reporting of rape allegations. The inmate alleged that the operator and the warden placed her in segregation for eight months because she reported a corrections officer's rape and another officer's assault, that the operator and warden were aware of her complaints, and that her placement in segregation was in close temporal proximity to the complaints. (New Mexico Women's Correctional Facility, Corrections Corporation of America)

U.S. Appeals Court
MONETARY
DAMAGES
PROCEDURES

Peterson v. Johnson, 714 F.3d 905 (6th Cir. 2013). A Michigan prisoner brought a § 1983 action against prison officers, seeking financial damages for an officer's alleged use of excessive force. The district court granted the officers' motions for summary judgment. The prisoner appealed. The appeals court affirmed. The court held that the prisoner had an adequate opportunity to litigate, at a major misconduct hearing, the factual dispute as to whether he grabbed a prison officer by the right hand and pulled the officer's hand into the cell as the door was closing. The court noted that not only did the prisoner have, and exercise, a plethora of statutory protections, but any objections he had to the major misconduct hearing itself could have been appealed within the department and then, if necessary, to state court. (Ionia Correctional Facility, Michigan)

U.S. Appeals Court
RETALIATION

Santiago v. Blair, 707 F.3d 984 (8th Cir. 2013). A state prisoner brought a § 1983 action against correctional officers, alleging excessive force and deliberate indifference to his medical needs in violation of the Eighth Amendment and retaliation in violation of the First Amendment. The district court granted the officers' motion for summary judgment with respect to official capacity claims, but denied summary judgment with respect to individual capacity claims. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court improperly applied the Fourth Amendment excessive force legal standard to the prisoner's § 1983 claim for excessive force in violation of the Eighth Amendment, warranting remand to the district court to inquire whether the force was applied to the prisoner in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. The appeals court held that summary judgment in prisoner's First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether a correctional officer's threats of death would chill a prisoner of ordinary firmness from engaging in the prison grievance process. The court also found a genuine dispute of material fact as to whether the correctional officer issued death threats to the prisoner because the prisoner had filed and pursued an excessive force grievance. According to the court, summary judgment in the First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether the correctional officer's placement of the prisoner in a cell without his personal property, proper facilities, bedding, or clothing, and the officer's threat that things would get worse, issued after hearing the prisoner complain that he was being retaliated against, were adverse actions sufficient to chill a prisoner of ordinary firmness from engaging in the prison grievance process. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
EXHAUSTION
RETALIATION

Schultz v. Pugh, 728 F.3d 619 (7th Cir. 2013). A state prisoner brought a civil rights action against prison officials, claiming he had been retaliated against for speaking up about an assault that he alleged had been made upon him by two prison guards. The district court dismissed, and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's failure to exhaust administrative remedies by not filing a grievance that conformed to prison rules barred his action. The prisoner claimed that he was afraid to file a grievance because the retaliation included a prohibition against speaking about the alleged assault. (Chippewa Valley Corr'l. Treatment Facility, Wisconsin)

U.S. District Court
RETALIATION

Simmons v. Adamy, 987 F.Supp.2d 302 (W.D.N.Y. 2013). A Muslim inmate brought a § 1983 action against Department of Correctional Services (DOCS) officials and a corrections officer, alleging, among other things, that the defendants subjected him to unlawful retaliation. The defendants moved for summary judgment, and inmate cross-moved for summary judgment. The district court granted the defendants' motion. The court held that the alleged actions of prison officials in restricting the law library access of the Muslim inmate after he filed grievances, scheduling his library "call-outs" to conflict with religious celebrations and classes, and filing a false misbehavior report, were not adverse actions that could support the inmate's § 1983 First Amendment retaliation claim. The court noted that there was no evidence that: (1) the inmate was treated differently from other inmates who had not pursued grievances; (2) he was afforded less than reasonable, or less than typical, access to the law library; (3) his free exercise rights were affected in more than a de minimis fashion; or (4) he was unfairly disciplined as a result of the report. (Attica Correctional Facility, New York)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Small v. Camden County, 728 F.3d 265 (3rd Cir. 2013). A paraplegic prisoner who was confined to a wheelchair brought a civil rights action against a county correctional facility, approximately thirty individual medical personnel and prison officers, and nine John Does. The district court dismissed the action for failure to exhaust administrative remedies, and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that because prison procedures did not contemplate an appeal from a non-decision, when the prisoner failed to receive even a response to grievances addressing certain incidents, much less a decision as to those grievances, the appeals process was "unavailable" to him for the exhaustion purposes of the Prison Litigation Reform Act (PLRA). (Camden County Correctional Facility, New Jersey)

U.S. Appeals Court
RETALIATION
RIGHT TO ACCESS

Spencer v. Jackson County, Mo., 738 F.3d 907 (8th Cir. 2013). An inmate brought a § 1983 action against county detention center employees, alleging violation of his First Amendment rights. The district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by issues of material fact as to: (1) the inmate's First Amendment retaliation claim against a supervisor; (2) First Amendment retaliation claims arising from the inmate's transfer to another housing module; and (3) claims arising from the alleged obstruction of the inmate's access to a grievance process. The court found a dispute of material fact as to whether a program supervisor was motivated by the lawsuit the inmate had previously filed against her, when she removed the inmate from a trustee program almost immediately after he reminded her about his having filed the suit, resulting in his loss of access to income, work opportunities, and housing advantages as well as other privileges.

A fact issue was found as to whether the 53-year old inmate would have been transferred from a housing module for older inmates to a module that housed younger and more violent offenders, but for his use of the grievance process. The inmate had been approved for the detention center's Inmate Worker Program (IWP), also known as the "trustee program." Inmates in the trustee program received job assignments within the detention center and were paid for each shift, with an opportunity to earn more for additional work. They also received a number of privileges and incentives. They were housed in a trustee module and were eligible for late nights, weekend contact visitation rewards, and access to popcorn, soda, and a movie player. One of inmate's work assignments was in the kitchen, where inmates received extra food and may have one meal per work day in the break room area. (Jackson County Detention Center, Missouri)

U.S. Appeals Court
EXHAUSTION
PROCEDURES

Turley v. Rednour, 729 F.3d 645 (7th Cir. 2013). An Illinois prisoner serving a life sentence brought a § 1983 action against prison officials, alleging that the prisoner and other inmates classified as low-aggression offenders in the prisoner's cellhouse were subject to lockdowns for more than 50 percent of the days in a 33-month period. The district court dismissed the complaint at the screening stage for prisoner civil actions and the prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner had exhausted his administrative remedies. The court found that frequent unit-wide prison lockdowns for substantial periods of time deprived him of exercise and caused him various health issues, such as irritable bowel syndrome, severe stress, headaches, and tinnitus, stated a claim for an Eighth Amendment violation. According to the court, the prisoner sufficiently alleged prison officials' deliberate indifference to physical and psychological injuries, as required to state a claim for an Eighth Amendment violation, based on excessive prison lockdowns. The court noted that the prisoner alleged that he had filed multiple grievances about prison conditions, including a grievance specifically challenging small cells, and that the prison was the subject of numerous past lawsuits, including one specifically ordering a remedial plan for overcrowding, small cells, and lack of adequate medical care and hygiene. (Menard Correctional Center, Illinois)

2014

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014). A detainee in a county jail brought a § 1983 action against a sheriff, alleging failure to protect him against other inmates, deliberate indifference to his serious medical needs, failure to adequately train and supervise deputies, intentional infliction of emotional distress, and gross negligence. The district court granted summary judgment for the sheriff. The detainee appealed. The appeals court affirmed and then the court granted a rehearing en banc. The appeals court then reversed and remanded. The court held that administrative remedies at the jail were not available within meaning of the Prison Litigation Reform Act (PLRA), and therefore the detainee satisfied his exhaustion requirement. (Los Angeles Co. Men's Central Jail, California)

U.S. District Court
RIGHT OF ACCESS
DUE PROCESS
POLICIES AND
PROCEDURES

Alvarado v. Westchester County, 22 F.Supp.3d 208 (S.D.N.Y. 2014). Jail inmates, who were addicted to heroin before being taken into custody, brought a pro se § 1983 action against a county, the provider of on-site medical services at a jail, and county officials, alleging refusal to accept a grievance deprived them of First Amendment right to petition the government for redress, deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth Amendments, and deliberate indifference to risk of inadequate medical care at the jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the inmates had no First Amendment right to have grievances processed or investigated in any particular manner; (2) the mere receipt of the inmates' grievance by an assistant warden and the county executive was insufficient to establish their personal involvement; (3) the inmate's allegations established a deputy commissioner's personal involvement; (4) the allegations supported the inmates' § 1983 claim that the provider was deliberately indifferent; and (5) the allegations satisfied Monell's policy or custom requirement to support a § 1983 claim against county. (Correct Care Solutions Medical Services P.C., and Westchester County Jail, New York)

U.S. District Court
PROCEDURES
RIGHT OF ACCESS

Awalt v. Marketti, 74 F.Supp.3d 909 (N.D.Ill. 2014). The estate and the widow of a pretrial detainee who died in a county jail brought civil rights and wrongful death actions against jail personnel and medical care providers who serviced the jail. The county defendants and the medical defendants moved for summary judgment. The district court held that: (1) the evidence was sufficient for a reasonable juror to find that the correctional officers and a jail superintendent were deliberately indifferent to the detainee's medical needs; (2) summary judgment was precluded by genuine issues of material fact as to whether the officers knew that the detainee was suffering seizures while in jail and failed to take appropriate action; (3) a reasonable juror could have found that neither a physician nor a nurse made a reasoned medical judgment not to prescribe a particular anti-seizure drug for the detainee; and, (4) in the Seventh Circuit, private health care workers providing medical services to inmates are not entitled to assert qualified immunity. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the decision of the sheriff's office and the jail's medical services provider not to implement a standardized grievance mechanism led to a widespread practice at the jail of ignoring or delaying response to grievances and medical requests made by detainees, and as to whether this failure was the moving force behind the pretrial detainee's seizure-related death. (Grundy County Jail, Illinois)

U.S. Appeals Court EXHAUSTION PLRA- Prison Litigation Reform Act	<p><i>Cano v. Taylor</i>, 739 F.3d 1214 (9th Cir. 2014). A former prisoner brought a § 1983 action against prison officials, alleging deliberate indifference to his mental health needs in violation of the Eighth Amendment, and violations of his right to freely exercise his religious beliefs and to have access to the courts, in violation of the First and Fourteenth Amendments. The district court granted summary judgment to the officials on the deliberate indifference claim and dismissed the remaining counts for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act (PLRA). The former prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the inmate's claims for injunctive and declaratory relief arising out of alleged constitutional violations that occurred while in prison were mooted by his release from prison. The court found that there was no evidence that prison mental health care providers were deliberately indifferent to the prisoner's medical needs, as required to support an Eighth Amendment deliberate indifference claim, where the prisoner was seen by mental health care employees regularly for his complaints, and evidence showed that the prisoner's suicide threats were manipulative in nature. According to the appeals court, in deciding whether the former prisoner's § 1983 claims were administratively exhausted pursuant to the Prison Litigation Reform Act (PLRA), the district court should have used the date of the First Amended Complaint, which added the claims, rather than the date of the original complaint. (Arizona Department of Corrections)</p>
U.S. District Court EXHAUSTION	<p><i>Cox v. Massachusetts Dept. of Correction</i>, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. (Massachusetts Dept. of Correction, Old Colony Correctional Center)</p>
U.S. District Court PLRA- Prison Litigation Reform Act EXHAUSTION	<p><i>Crayton v. Graffeo</i>, 10 F.Supp.3d 888 (N.D. Ill. 2014). A pretrial detainee in a county department of corrections jail brought an action against three correctional officers, alleging that they beat him in two separate incidents, and asserting an excessive-force claim under § 1983. The officers filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that the detainee failed to exhaust his administrative remedies before filing his § 1983 action, where the detainee neither appealed the notice that his grievance was being forwarded to the jail's Office of Professional Review (OPR), nor did he await the results of OPR's investigation. (Cook County Department of Corrections, Illinois)</p>
U.S. District Court RETALIATION	<p><i>Greening v. Klemme</i>, 34 F.Supp.3d 1144 (E.D.Wash. 2014). A state inmate brought a § 1983 action alleging that prison officials and employees retaliated against him, in violation of the First Amendment, for the content of letters and manuscript he authored, as well as his filing of grievances and a lawsuit. The district court granted the inmate's motion for a protective order. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate's incoming mail from his creative writing instructor and his outgoing mail to his mother were restricted by prison officials due to the legitimate penological interest of prohibiting inmates from receiving or sending sexually explicit mail, and thus the restriction of the mail did not violate the inmate's First Amendment rights. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison mailroom staff members selectively applied the foreign language mail policy as a pretext to prevent the inmate, who filed grievances, from receiving mail from his overseas parents written in Norwegian, as to whether the staff members made an effort to seek translations, and as to whether the policy as applied amounted to a de facto ban on all of the inmate's incoming non-English mail.</p> <p>The court also found that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer who screened the inmate's outgoing e-mail to his family and a correctional sergeant with whom the screening officer shared the e-mail colluded to penalize the inmate for opinions expressed in the e-mail, and as to whether the actions of the screening officer and the sergeant chilled the inmate's exercise of protected rights. The court held that there was no causal connection between the inmate's seeking a temporary restraining order (TRO) in separate litigation and the officials' placing him in solitary confinement over one year later. (Airway Heights Corrections Center, Washington)</p>
U.S. District Court RETALIATION	<p><i>Meeks v. Schofield</i>, 10 F.Supp.3d 774 (M.D.Tenn. 2014). A state prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, brought an action against the Commissioner of the Tennessee Department of Correction, its Americans with Disabilities Act (ADA) officer, a housing unit supervisor, a grievance board chairman, and a warden, asserting § 1983 claims for First Amendment retaliation and violation of his right to privacy, and alleging violations of the ADA and Title VII. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner failed to establish retaliation claims against the ADA officer, the housing unit supervisor, and the warden. The court found that the prisoner, who was assisting other inmates with their legal work, was not engaged in "protected conduct," as required to establish a First Amendment retaliation claim against the housing unit supervisor, where the prisoner was not authorized to help other inmates with legal work, and thus was in violation of department policy. (Lois M. DeBerry Special Needs Facility, Tennessee)</p>
U.S. District Court EXHAUSTION PLRA- Prison Litigation Reform Act PROCEDURES	<p><i>Palmer v. Flore</i>, 3 F.Supp.3d 632 (E.D.Mich. 2014). A prisoner brought an action against prison officials, alleging that they were deliberately indifferent to his medical needs. The defendants asserted an affirmative defense that the prisoner failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA). The district dismissed the defendants' defense with prejudice, finding that the prisoner's timely submission of a Step-I grievance pursuant to the Michigan Department of Corrections' (MDOC) three-step grievance process was sufficient to comply with the PLRA exhaustion requirement, even though the prisoner received no response from prison officials. The court noted that the prisoner completed the required form an slid it through the crack in his cell door, which was apparently a common practice that prisoners in administrative segregation used for submitting grievances. (St. Louis Correctional Facility, Michigan)</p>

U.S. District Court
RETALIATION

Richard v. Fischer, 38 F.Supp.3d 340 (W.D.N.Y. 2015). A multiracial Muslim inmate brought a civil rights action alleging that prison officials and employees discriminated against him on the basis of race and religion and retaliated against him for filing grievances. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that New York State Department of Correctional Services (DOCS) employees were acting within scope of their employment, specifically, the duty of assigning work positions to inmates, when they denied the multiracial Muslim inmate employment outside of his cellblock. According to the court, a prison employee's filing of allegedly false disciplinary reports against the inmate was causally related to the inmate's filing of grievances challenging the prison's employment policy one to three months prior, thus supporting the inmate's § 1983 First Amendment retaliation claim against the employee. (Five Points Correctional Facility, New York)

U.S. District Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act

Stevens v. Gooch, 48 F.Supp.3d 992 (E.D.Ky. 2014). An inmate brought an action against a jailer and a county, asserting section 1983 and state law claims related to the adequacy of the jail's medical treatment. The defendants moved for summary judgment. The district court granted the motion. The court found that the inmate sufficiently exhausted administrative remedies under the Prison Litigation Reform Act (PLRA) prior to bringing the § 1983 action, where the inmate filed five grievances related to his ankle injury but never received a response from jail officials. (Lincoln County Jail, Kentucky)

U.S. Appeals Court
EXHAUSTION
PLRA- Prison Litigation
Reform Act
PROCEDURES

Swisher v. Porter County Sheriff's Dept., 769 F.3d 553 (7th Cir. 2014). A state inmate brought a § 1983 action against a sheriff and jail personnel, alleging that he was denied medical care while in jail. The district court dismissed the case, and the inmate appealed. The appeals court reversed and remanded. The court held that jail officials "invited" the inmate's noncompliance with grievance procedures, and thus he sufficiently exhausted administrative remedies by asking senior jail officers, up to and including the warden, about how to file a grievance. According to the court, the inmate was told not to file a grievance because the officers understood his problem and would resolve it without the need for invocation of a formal grievance procedure. But those informal resolution procedures were not successful, and the officials did not tell the inmate how to invoke a formal grievance process. (Porter County Jail, Indiana)

U.S. District Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Taylor v. Swift, 21 F.Supp.3d 237 (E.D.N.Y. 2014). A pro se prisoner brought a § 1983 action against city jail officials, alleging that officials failed to protect him from an assault from other inmates, and that officials used excessive force in handcuffing the prisoner after escorting him from showers to his cell. The officials moved to dismiss based on failure to exhaust administrative remedies, and the motion was converted to a motion for summary judgment. The district court denied the motion. The court held that it was objectively reasonable for the prisoner, to conclude that no administrative mechanism existed through which to obtain remedies for the alleged attack, and thus the prisoner was not required under the Prison Litigation Reform Act (PLRA) to exhaust administrative remedies before bringing his claim. The court noted that the jail's grievance policy stated that "allegation of assault...by either staff or inmates" was non-grievable, the policy stated that an inmate complaint "is grievable unless it constitutes assault, harassment or criminal misconduct," the prisoner alleged that officials committed criminal misconduct in acting with deliberate indifference toward him, and although the prisoner did not complain of the assault by officials, the prisoner would not have been required to name a defendant in filing a grievance. According to the court, even if city jail officials would have accepted the prisoner's failure-to-protect grievance, the prisoner's mistake in failing to exhaust administrative procedures was subjectively reasonable. (New York City Department of Correction, Riker's Island)

U.S. District Court
RETALIATION

Williams v. Klien, 20 F.Supp.3d 1171 (D.Colo. 2014). A federal inmate brought a Bivens action against various prison officials, alleging a due process violation and First Amendment retaliation, as related to his complaints about sleep deprivation and penalties that followed his complaints. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated a Bivens claim against a prison official, alleging First Amendment retaliation and seeking declaratory and injunctive relief, and the prison official was not entitled to qualified immunity on the inmate's First Amendment retaliation claim seeking declaratory and injunctive relief. The inmate alleged that the prison official expressed his disdain for the inmate and his various grievances, and then arranged for continued adverse actions to be taken against the inmate, as required for the inmate to state a Bivens claim for declaratory or injunctive relief. The inmate alleged that during a one year period, he was awakened each night while he was sleeping, as officers were conducting count they would beat on his cell door, and that these actions were taken to deprive him of adequate sleep. According to the court, the inmate's allegations indicated that he sought to exercise his First Amendment rights by filing grievances, that the official was aware of the inmate's attempt to file grievances, that, based on that awareness, the official took action to impose adverse consequence on the inmate, and that the consequence would deter a person of ordinary firmness from engaging in a constitutionally-protected activity. (Federal Correctional Institution, Florence, Colorado)

2015

U.S. District Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Angulo v. Nassau County, 89 F.Supp.3d 541 (E.D.N.Y. 2015). An inmate brought a pro se action against a county and its correctional facility personnel, alleging the defendants violated his constitutional rights through the destruction of various legal documents and his legal mail. The defendants moved for summary judgment. The district court granted the motion. The court held that: (1) the inmate's letter of complaint did not comply with the correctional facility's grievance procedure, and thus the inmate failed to properly exhaust his administrative remedies; (2) administrative remedies were "available" to the inmate, and thus the inmate was not excused from filing a grievance; (3) the inmate's allegations that personnel acted willfully and maliciously were insufficient to support the claim that personnel interfered with his ability to access the courts; and (4) personnel did not conspire to destroy the inmate's legal mail. (Nassau County Correctional Center, and Downstate Correctional Facility, New York)

U.S. District Court
RETALIATION

Barnes v. County of Monroe, 85 F.Supp.3d 696 (W.D.N.Y. 2015). A state inmate brought a § 1983 action against a county, county officials, and correctional officers, alleging that the officers used excessive force against him and that he was subjected to unconstitutional conditions of confinement during his pretrial detention. The defendants moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the former pretrial detainee's allegation that a county correctional officer used excessive force when he responded to a fight between the detainee and fellow inmates, and jumped on the detainee's back, striking him in face and knocking out a tooth, and that the officer was not merely using force to maintain or restore discipline but that the entire incident was "premeditated," stated a § 1983 excessive force claim against officer under the Due Process Clause. According to the court, the former detainee's allegations that county correctional officers used excessive force when they pushed him face-first into a glass window, pushed him to the floor, kicked, stomped on and punched him, and used handcuffs to inflict pain, that as a result of the altercation, the inmate urinated and defecated on himself and experienced dizziness and a concussion, and that the force used on him was in response to his reaching for legal papers and attempting to steady himself, stated a § 1983 excessive force claim against the officers under the Due Process Clause.

The court found that the former detainee's allegations that a county correctional officer who responded to a fight between the detainee and other inmates "collaborated" with fellow officers to delay an emergency call, allowing the detainee to be attacked by inmates, stated a conspiracy claim in violation of his constitutional rights under § 1983.

The court held that the former detainee's allegations that, before being placed in a special housing unit (SHU), he was subjected to a strip search by a county correctional officer, that during the course of the strip search the detainee felt that he was degraded and humiliated, and he subsequently filed grievance against the officer, that later the same day the officer approached the detainee's cell and made sexual comments and gestures, and that other officers filed a false misbehavior report against him in retaliation for the detainee's grievance, stated a § 1983 First Amendment retaliation claim against the officers.

The court found that the former detainee's allegations that, after he was released from a special housing unit (SHU), county correctional officers placed him in a poorly ventilated cell where he was exposed to human excrement and bodily fluids over the course of multiple days, and that he was subjected to extreme conditions in the SHU by way of 24-hour lighting by the officers, stated a § 1983 conditions-of-confinement claim against the officers under the Due Process Clause. (Upstate Correctional Facility and Monroe County Jail, New York)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Blake v. Ross, 787 F.3d 693 (4th Cir. 2015). An inmate brought a § 1983 action against correctional officers, alleging use of excessive force. One officer moved for summary judgment on the ground that inmate failed to exhaust his administrative remedies. The district court granted the motion and the inmate appealed. The appeals court reversed and remanded. The court held that an internal investigation afforded correction officials time and opportunity to address the complaints internally, as required for an exception to the PLRA exhaustion of remedies requirement to apply, and the inmate's belief that he had exhausted administrative remedies was a reasonable interpretation of the inmate grievance procedures. (Maryland Reception Diagnostic and Classification Center)

U.S. District Court
RETALIATION

Burroughs v. Petrone, 138 F.Supp.3d 182 (N.D.N.Y. 2015). An inmate brought a pro se § 1983 action against employees of the New York State Department of Corrections and Community Supervision (DOCCS), alleging Eighth Amendment violations and asserting a claim for retaliation under First Amendment. The inmate sought leave to proceed in forma pauperis. The court granted the motion. The court held that the inmate sufficiently pled a First Amendment retaliation claim based on confiscated property. The inmate alleged that correction officers confiscated two bags of his property in retaliation for his grievances. (Downstate Correctional Facility, Coxsackie Correctional Facility, N.Y.)

U.S. District Court
EXHAUSTION
PLRA-Prison Litigation
Reform Act

Byrd v. Stirling, 144 F.Supp.3d 803 (D.S.C. 2015). A state inmate filed a civil action against prison officials, alleging that the prison served him meals incompatible with his diabetes and that much of the food was expired, rotten, or full of preservatives. The district court dismissed the action, finding that the inmate failed to exhaust his administrative remedies before bringing the civil action in district court, and thus dismissal was warranted under the Prison Litigation Reform Act (PLRA). According to the court, the inmate did not complete all three levels of internal review at the prison before he filed suit. (Manning Correctional Institution, South Carolina)

U.S. Appeals Court
RETALIATION
PLRA- Prison Litigation
Reform Act

Dimanche v. Brown, 783 F.3d 1204 (11th Cir. 2015). A state prisoner brought a § 1983 action against prison officials, alleging he was subjected to harsh treatment in retaliation for filing grievances about prison conditions and asserting claims for cruel and unusual punishment, due process violations, and First Amendment retaliation. The district court dismissed the case for failure to exhaust administrative remedies and failure to state a claim pursuant to the in forma pauperis statute. The prisoner appealed. The appeals court reversed and remanded. The court held that the grievance sent by the state prisoner directly to the Secretary of the Florida Department of Corrections (FDOC) met the conditions for bypassing the informal and formal grievance steps at the institutional level under Florida law, and thus the prisoner satisfied the Prison Litigation Reform Act's (PLRA) exhaustion requirement with respect to his § 1983 claims alleging cruel and unusual punishment, due process violations, and First Amendment retaliation. The court noted that the prisoner clearly stated at the beginning of the grievance form that he was filing a grievance of reprisal, indicating he feared for his life and that he was "gassed in confinement for grievances [he] wrote," and clearly stated the reason for bypassing the informal and formal grievance steps, namely, his fear that he would be killed if he filed additional grievances at the institutional level, and alleged participation by high-ranking prison officials. The court found that the prisoner stated claims against prison officials for First Amendment retaliation and cruel and unusual punishment by alleging that prison guards and officials sprayed him with tear gas without provocation, denied him prompt medical care, filed false disciplinary reports, and threatened further retaliation, all in retaliation for filing grievances. (Liberty Correctional Institution, Florida)

U.S. Appeals Court RETALIATION	<i>Dolan v. Connolly</i> , 794 F.3d 290 (2 nd Cir. 2015). A state prisoner brought an action against prison officials, asserting claims under § 1983 for retaliation for the prisoner's actions in filing and voicing inmate grievances on behalf of other prisoners as a member of prison's inmate liaison committee. The district court dismissed the action for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, vacated, and remanded in part. The court held that the prisoner's actions in filing and voicing inmate grievances on behalf of other prisoners, as a member of the prison's inmate liaison committee, was protected conduct under his First Amendment right of petition. (N.Y. Dept. of Corrections & Community Supervision, Special Housing Unit, Fishkill Corr. Facility)
U.S. Appeals Court RETALIATION	<i>Goguen v. Allen</i> , 780 F.3d 437 (1 st Cir. 2015). A pretrial detainee brought a § 1983 action against correctional officers, claiming that the defendants inflicted punishment on him without due process of law and retaliated against him for filing grievances, in violation of his rights under the First, Eighth, and Fourteenth Amendments. The district court denied summary judgment to the defendants on qualified immunity grounds. The defendants appealed. The appeals court dismissed the appeal. The court held that the district court's determination that summary judgment was precluded by genuine issues of material fact as to the motivations of the corrections officers in assigning a pretrial detainee to administrative segregation precluded granting the officers' motion for a sovereign immunity-based summary judgment was not subject to appellate review, where the officers on appeal did not raise any purely legal issues that called into question the denial of their summary judgment motion based on qualified immunity, but rather raised challenges to the plaintiff's evidence and recitation of facts. (Somerset County Jail, Maine)
U.S. Appeals Court RIGHT OF ACCESS PLRA- Prison Litigation Reform Act EXHAUSTION PROCEDURES	<i>Hubbs v. Suffolk County Sheriff's Dept.</i> , 788 F.3d 54 (2 nd Cir. 2015). A county jail detainee brought a § 1983 action against a county sheriff's department, and sheriff's deputies, alleging that he was severely beaten by the deputies while in a holding cell at a courthouse. The district court granted summary judgment in favor of the defendants based on the detainee's failure to exhaust administrative remedies. The detainee appealed. The appeals court vacated and remanded, finding that the affidavit of a county jail grievance coordinator, along with a handbook detailing a grievance procedure, did not establish that the detainee had an available administrative remedy, and neither the handbook nor the affidavit demonstrated that the county or sheriff's department, or any official, handled grievances arising from occurrences in the courthouse holding cells or whether remedies for such grievances were actually available. According to the court, the deputies forfeited any arguments that statutory remedies were available to the county jail detainee where the deputies failed to identify in the district court or on appeal any statutes or regulations showing that administrative remedies were available for events that took place in the courthouse holding facility. (Suffolk County Correctional Facility, New York)
U.S. District Court RETALIATION	<i>Hudson v. MacEachern</i> , 94 F.Supp.3d 59 (D. Mass. 2015). Two state prisoners brought a pro se action against multiple officials of the state department of corrections (DOC), asserting that they were targeted for retaliation for their filing of prison grievances, as well as for assisting other prisoners in filing grievances. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that alleged conduct by certain DOC officials in placing the prisoner in the special management unit, a segregated housing unit, and filing a disciplinary report against him, after becoming aware of, and because of, the prisoner's protected conduct of filing grievances against officials and assisting other inmates in filing grievances, was sufficient to support the prisoner's pro se First Amendment retaliation claim against the officials. According to the court, the prisoner's allegations that a prison disciplinary officer improperly rubberstamped the disciplinary report against the prisoner without adequate investigation, without more, did not state a claim for violation of a Massachusetts prison regulation requiring the disciplinary officer to review prison disciplinary reports or make further investigation the officer deemed necessary. (Massachusetts Correctional Institution at Shirley)
U.S. Appeals Court PLRA- Prison Litigation Reform Act RETALIATION	<i>Kervin v. Barnes</i> , 787 F.3d 833 (7 th Cir. 2015). A state prisoner brought a § 1983 action against prison officials, alleging that he was placed in segregation as punishment for insisting on keeping his appointment with an attorney and that he was denied due process when he sought redress from the prison's grievance system. The district court, pursuant to the screening process of the Prison Litigation Reform Act (PLRA), dismissed the suit on the pleadings. The prisoner appealed. The appeals court affirmed. The court held that the state prisoner did not provide any information as to the content or purpose of his meeting with the attorney, precluding any finding as to whether the meeting involved protected speech, as required to support the prisoner's § 1983 claim that he was punished not for his insubordinate speech to a prison guard, but rather for meeting with, and presumably talking to, an attorney. (Indiana Department of Corrections)
U.S. Appeals Court PLRA- Prison Litigation Reform Act EXHAUSTION	<i>King v. McCarty</i> , 781 F.3d 889 (7 th Cir. 2015). A state prisoner brought a § 1983 action against a county sheriff and two jail guards, alleging the jail's use of a transparent jumpsuit during his transfer to a state prison, which exposed the prisoner's genitals, violated the prisoner's rights under the Fourth and Eighth Amendments. The district court dismissed the prisoner's Eighth Amendment claim for failure to state a claim and granted the defendant's motion for summary judgment as to the Fourth Amendment claim. The prisoner appealed. The appeals court reversed and remanded. The court held that: (1) the prisoner was required to direct his grievance to the jail, not the state prison, in order to satisfy the Prison Litigation Reform Act's (PLRA) exhaustion requirement; (2) the jail's grievance procedure was not "available," within the meaning of PLRA; (3) allegations were sufficient to state a claim under the Eighth Amendment; and (4) the jail's requirement that the prisoner wear a transparent jumpsuit did not violate the Fourth Amendment. (Illinois Department of Corrections, Livingston County Jail)
U.S. District Court PLRA- Prison Litigation Reform Act EXHAUSTION	<i>Kitchen v. Ickes</i> , 116 F.Supp.3d 613 (D. Md. 2015). An inmate brought a § 1983 action against a corrections officer and a prison health care provider, alleging excessive force in the officer's use of pepper spray and deliberate indifference to a serious medical need. The officer and the provider moved to dismiss, or, in the alternative, for summary judgment. The district court granted the motion. The court held that the inmate exhausted his available administrative remedies as to his claim that the corrections officer used excessive force in spraying him with

pepper spray, as required to file suit against the officer, under the Prison Litigation Reform Act (PLRA). The court noted that the inmate filed a request for an administrative remedy on the issue of alleged use of excessive force, appealed the decision rendered concerning his claim of excessive force, and subsequently filed a grievance with the inmate grievance office regarding the officer's use of pepper spray. The court held that the inmate failed to exhaust his available administrative remedies, as required prior to bringing suit with respect to prison conditions under the Prison Litigation Reform Act (PLRA), as to his claim that after he was sprayed with pepper spray, he was forced to sleep on a mattress that was contaminated with pepper spray, without sheets, for weeks. The court noted that the inmate failed to file a request for an administrative remedy on the issue of the contaminated mattress, and raised the issue for first time in his appeal to the inmate grievance office regarding the officer's use of pepper spray. (North Branch Correctional Institution, Maryland)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Lee v. Willey, 789 F.3d 673 (6th Cir. 2015). A former prisoner brought a § 1983 claim against a part-time prison psychiatrist, alleging that he suffered sexual abuse by another prisoner as a result of the psychiatrist's deliberate indifference to his health and safety in violation of the Eighth Amendment. The district court entered summary judgment in the psychiatrist's favor. The former prisoner appealed. The appeals court affirmed, finding that the district court's ruling that the former prisoner did not submit a substitute prison grievance letter was not clearly erroneous, and the former prisoner failed to exhaust administrative remedies prior to bringing his § 1983 claim. (Charles Egeler Reception and Guidance Center, Michigan)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
RETALIATION

McBride v. Lopez, 791 F.3d 1115 (9th Cir. 2015). After a prison's appeals coordinator dismissed a prisoner's administrative grievance as untimely, the prisoner brought an action against prison guards under § 1983 claiming violation of the Eighth Amendment by use of excessive force against him, under the provisions of the Prison Litigation Reform Act ("PLRA"). The district court granted the guards' motion to dismiss and the prisoner appealed. The appeals court affirmed. The appeals court noted that a two-part test for determining whether a threat to a prisoner rendered the prison grievance system unavailable had been developed by the 11th Circuit, requiring the prisoner to provide a basis for the court to find that he actually believed prison officials would retaliate against him if he filed a grievance, and if he makes such a showing, he must then demonstrate that his belief was objectively reasonable. The court found that the prisoner subjectively believed that the guards' statements were a threat, where the prisoner had recently been beaten by the guards that made the statement, and the prisoner could have believed the guards bore him considerable hostility and therefore the statement could have been interpreted as threatening. But the court found that the statement could not have reasonably been objectively viewed as a threat of retaliation if the prisoner filed a grievance against the guards, where there was no allegation or evidence that the guards believed the prisoner was contemplating filing a grievance, and the prisoner had not asked for the materials necessary to file a grievance or had given any indication he intended to file a grievance. (Pleasant Valley State Prison, California)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

McBride v. Lopez, 807 F.3d 982 (9th Cir. 2015). After a prison's appeals coordinator dismissed a prisoner's administrative grievance as untimely, the prisoner brought an action against prison guards under § 1983 claiming violation of the Eighth Amendment by use of excessive force against him. The district court granted the guards' motion to dismiss. The prisoner appealed. The appeals court affirmed. The court held that: (1) the threat of retaliation for reporting an incident can render the prison grievance process effectively unavailable and thereby excuse a prisoner's failure to exhaust administrative remedies before filing a court action; (2) the prisoner subjectively perceived prison guards' statement to be a threat not to use the prison grievance system; and (3) prison guards' statement could not have reasonably been objectively viewed as a threat of retaliation if the prisoner filed a grievance against the guards. The guards had stated that he was "lucky," in that the injuries he sustained during an altercation between the prisoner and guards "could have been much worse" than they were, to be a threat not to use the prison grievance system. The court noted that the prisoner had recently been beaten by the guards that made the statement, and the prisoner could have believed the guards bore him considerable hostility and therefore the statement could have been interpreted as threatening. (Pleasant Valley State Prison, California)

U.S. District Court
PLRA- Prison Litigation
Reform Act

Minton v. Childers, 113 F.Supp.3d 796 (D. Md. 2015). A prisoner brought a § 1983 action against prison officials, seeking injunctive relief, along with nominal and punitive damages, after the officials barred his receipt of used books pursuant to prison directives. The officials and the prisoner both filed motions for summary judgment. The district court granted the officials' motion and denied the prisoner's motion. The court held that the prisoner failed to exhaust administrative remedies under Maryland law prior to filing the § 1983 action in federal court, in violation of the Prison Litigation Reform Act (PLRA). (Eastern Correctional Institution, Maryland)

U.S. District Court
RETALIATION

Montalvo v. Lamy, 139 F.Supp.3d 597 (W.D.N.Y. 2015). An inmate brought an action against a sheriff, prison officials and a commissary, alleging that he was a diabetic and that, while incarcerated, he was not provided with a medically appropriate diet, was not permitted to purchase food items from the prison commissary, and was the subject of false misbehavior reports when he complained about his dietary issues. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate failed to allege that the prison commissary, operated by a private company, was acting under the color of state law, as required to state constitutional claims against the commissary. The court noted that the inmate did not allege that the commissary had a policy of denying commissary access to diabetic prisoners or had the authority to override the prison's policy with respect to inmates with dietary restrictions, and instead, alleged that the prison maintained a policy of limiting commissary access for prisoners with dietary restrictions.

The court found that the inmate did not state a First Amendment retaliation claim against a sergeant who allegedly would not process the inmate's grievance related to his inability to purchase snacks from the prison commissary, where the sergeant was acting in compliance with a state regulation, which required him, as the Grievance Coordinator, to return grievances regarding issues outside the authority of the chief administrative officer to control, such as medical decisions made by health care professionals. (Erie County Holding Center, New York)

U.S. Appeals Court
RETALIATION

Pearson v. Secretary Dept. of Corrections, 775 F.3d 598 (3rd Cir. 2015). A state inmate filed a § 1983 action alleging that prison officials retaliated against him for filing grievances and a civil lawsuit. The district court dismissed the case and denied the inmate's motion for reconsideration. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegation that a unit manager told him he was being terminated from his prison job because of grievances that he had filed nearly one year earlier was sufficient to state a plausible retaliation claim in the inmate's § 1983 action against prison officials. (Pennsylvania Department of Corrections)

U.S. Appeals Court
RETALIATION

Perez v. Fenoglio, 792 F.3d 768 (7th Cir. 2015). An inmate brought a pro se § 1983 action against prison officials alleging cruel and unusual punishment in violation of the Eighth Amendment, in particular, that the officials were deliberately indifferent to his severe hand injury, delaying his receipt of medically necessary surgery for ten months. After twice denying the inmate's request for pro bono counsel, the district court dismissed the action with prejudice, for failure to state a claim. The inmate appealed and appellate counsel was appointed. The appeals court reversed and remanded. The court held that: (1) the inmate stated a claim against a prison physician for such serious delays in the provision of adequate treatment that the Eighth Amendment may have been violated; (2) the inmate stated a claim against a prison nurse for deliberate indifference; (3) the inmate sufficiently identified an unconstitutional policy or practice to state a claim under § 1983 against the private corporation that served as the prison's health care provider; (4) the inmate stated a claim for deliberate indifference against the prison's health care administrator; (5) the inmate stated a claim for deliberate indifference against prison grievance officials; (6) the inmate stated a valid First Amendment retaliation claim; and (7) the district court's denial of the inmate's request for pro bono counsel was not unreasonable. (Lawrence Correctional Center, Illinois)

U.S. District Court
RETALIATION

Quiroz v. Horel, 85 F.Supp.3d 1115 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official had a retaliatory motive for issuing a Rules Violation Report (RVR) against the prisoner; (2) whether officials had a retaliatory motive when they searched the prisoner's cell; and (3) whether prison officials had an agreement to retaliate against the prisoner by searching his cell, confiscating his paperwork, and issuing a Rules Violation Report (RVR) against him. (Pelican Bay State Prison, California)

U.S. District Court
RETALIATION

Quiroz v. Short, 85 F.Supp.3d 1092 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official acted with a retaliatory motive when he sent to the prisoner's fiancé a letter intended for another woman; (2) whether the prison official acted with a retaliatory motive when he issued a rules violation report (RVR) against the prisoner; and (3) whether officials had an agreement to retaliate against the prisoner by issuing the RVR against him. The court found that: (1) the official did not have a retaliatory motive in investigating an administrative grievance; (2) the prisoner's assertion that one of the official's duties was to monitor incoming and outgoing mail was insufficient to show that the official destroyed two specific pieces of the prisoner's mail; (3) the official was entitled to qualified immunity on the prisoner's right to intimate association claim; and (4) the official's act of sending a letter to the prisoner's fiancé that was intended for another woman did not prevent the prisoner from continuing to associate with his fiancé and did not prevent the prisoner from marrying his fiancé. (Pelican Bay State Prison, Secure Housing Unit, California)

U.S. Appeals Court
RIGHT OF ACCESS
PLRA- Prison Litigation
Reform Act
PROCEDURES

Thomas v. Reese, 787 F.3d 845 (7th Cir. 2015). A state inmate filed a § 1983 action alleging that county correctional officers unlawfully used excessive force in the course of handcuffing him after he disobeyed an order. The district court entered summary judgment in the officers' favor and inmate the appealed. The appeals court reversed and remanded, finding that the inmate was not barred by the Prison Litigation Reform Act (PLRA) from bringing the action. The court noted that the inmate did not have an available administrative remedy, where the inmate did not have access to an inmate handbook that set forth the proper grievance procedure, the officer informed the inmate that he could not file a grievance, the handbook only permitted inmates to dispute alleged violations, and the inmate was not contesting his discipline, but rather was challenging the officers' conduct that occurred after his offenses. (Dane County Jail, Wisconsin)

U.S. District Court
RETALIATION

Vincent v. Sitnewski, 117 F.Supp.3d 329 (S.D.N.Y. 2015). A New York inmate brought a § 1983 action against prison officers, alleging claims for First Amendment retaliation and failure to protect under the Eighth Amendment. The officers moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the alleged sexual groping by a prison officer would have deterred a person of "ordinary firmness" from exercising his constitutional rights, and as to whether the officer who allegedly groped the inmate was motivated by retaliatory purpose.

The court found that summary judgment was precluded by genuine issues of material fact as to whether a prison officers' alleged intrusion on the inmate's shower, removal of a shower curtain and the inmate's clothes, and conduct of leaving the inmate standing naked in the shower room for approximately one hour, would have deterred a person of "ordinary firmness" from exercising his constitutional rights, and as to whether the officer who allegedly groped the inmate was motivated by a retaliatory purpose.

According to the court, summary judgment was also precluded by genuine issues of material fact as to whether a prison officer's conduct of entering the inmate's cell and warning the inmate that if he filed any more grievances, or if the officer caught him doing "any of that Muslim stuff around here," the officer was going to "jump" him,

would have deterred a person of “ordinary firmness” from exercising his constitutional rights. The court found that the inmate’s allegations that prison officers handcuffed him to a bedpost for 18 hours, purportedly as payback for filing grievances, even if improbable, were neither fanciful, fantastic, nor delusional, precluding summary judgment on the ground of factual frivolousness on the inmate’s § 1983 claim for First Amendment retaliation arising from such conduct. The court noted that the inmate did not contradict himself and his allegations were quite serious, as they showed officers using their power to threaten and dehumanize an inmate they were supposed to protect. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Whitley v. Warden, Ware State Prison, 802 F.3d 1205 (11th Cir. 2015). A state prisoner brought a § 1983 action, alleging that he had been beaten by prison staff and denied medical care after the beating. The district court dismissed the action based on failure to exhaust administrative remedies. The prisoner appealed. The appeals court reversed. The court held that the district court failed to accept as true the prisoner’s view of the facts regarding exhaustion of administrative remedies and failed to make specific findings to resolve disputed issue of fact regarding the exhaustion of administrative remedies. (Telfair State Prison, Ware State Prison, Georgia Diagnostic and Classification Prison, Georgia)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

White v. Bukowski, 800 F.3d 392 (7th Cir. 2015). A pregnant county prisoner brought a civil rights action under § 1983 against a county sheriff’s office, alleging violation of her Eighth Amendment rights, alleging deliberate indifference to her need for proper prenatal care and prompt transport to a hospital for delivery of her baby while she was in their temporary custody. The county moved to dismiss. The district court granted the motion and the prisoner appealed. The appeals court reversed and remanded, finding that no administrative remedies were available, and thus the prisoner did not fail to exhaust administrative remedies under the requirements of the Prison Litigation Reform Act. The prisoner alleged that the delay in her transport to the hospital contributed to her baby’s birth defects. According to the court, the prisoner had no opportunity to grieve the delay in transport until after the harm was done, the prisoner was uninformed about any deadline for filing a grievance, the prisoner would not have known that she would be transferred to another jail four days after returning from the hospital, and the prisoner could not have filed a grievance after she was transferred. (Kankakee County Jail, Illinois)

U.S. District Court
RETALIATION

White v. Clement, 116 F.Supp.3d 183 (W.D.N.Y. 2015). A state prisoner sued the New York State Department of Corrections and Community Supervision (DOCCS) and a superintendent, two physicians, a registered nurse, a nurse administrator, and a chief medical officer (CMO), who were employed by DOCCS, claiming violation of the Eighth Amendment by denying adequate medical care. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a registered nurse ignored the prisoner’s excruciating pain and vomiting up blood from adverse reactions to his prescription medications, in retaliation for the prisoner’s filing of prison grievances. The court also held that summary judgment was precluded by a genuine issue of material fact remained as to whether the registered nurse refused to treat or to document the prisoner’s excruciating pain and vomiting up blood from his adverse reaction to his prescription medications. (New York State Department of Corrections and Community Supervision, Southport Correctional Facility)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Wilson v. Epps, 776 F.3d 296 (5th Cir. 2015). A state prisoner brought an action alleging prison officials violated his constitutional rights. The district court dismissed the complaint for failure to exhaust administrative remedies and the prisoner appealed. The appeals court affirmed, finding that the Mississippi Department of Corrections’ implementation of a “backlogging” policy did not abrogate the Prison Litigation Reform Act’s (PLRA’s) exhaustion requirement, and the prison’s failure to respond at the first step of a three step grievance process did not excuse the prisoner’s failure to exhaust administrative remedies. (Central Mississippi Correctional Facility)

2016

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
EXHAUSTION

Hernandez v. Dart, 814 F.3d 836 (7th Cir. 2016). A prisoner brought a § 1983 action against a sheriff and the county that employed him, alleging excessive force and deliberate indifference for shackling him to his hospital bed and failing to provide assistance to move between his geriatric (jerry) chair and bed, with the result that his bed sores did not improve. The district court granted the defendants’ motion for summary judgment based on the prisoner’s alleged failure to exhaust his administrative remedies, and the prisoner appealed. The appeals court reversed and remanded. The court held that a prison employees’ failure to inform the prisoner of the grievance procedure available to him at the time when he was hospitalized and complaining of being shackled to his hospital bed, meant that the grievance procedure was unavailable and that the prisoner did not have to exhaust his administrative remedies. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
RETALIATION

Hughes v. Scott, 816 F.3d 955 (7th Cir. 2016). A civil detainee filed a § 1983 action alleging that a facility’s officials retaliated against him for filing grievances. The district court dismissed the complaint, and the detainee appealed. The appeals court reversed and remanded. The court held that the detained sex offender’s allegations that officials at the detention facility disregarded his grievances regarding his dental care, and told him that he was “ignorant” and “stupid” and “moron,” and that his life would go better if he stopped complaining, were sufficient to state a plausible First Amendment retaliation claim against the officials. (Rushville Treatment and Detention Facility, Illinois)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
EXHAUSTION

Reyes v. Smith, 810 F.3d 654 (9th Cir. 2016). A state prisoner brought a § 1983 action against prison physicians, alleging that they had violated the Eighth Amendment through deliberate indifference to his medical needs by denying him pain medication. The district court granted the physicians’ motion to dismiss. The prisoner appealed. The appeals court reversed and remanded. The court held that as a matter of first impression, a prisoner exhausts administrative remedies under the Prison Litigation Reform Act (PLRA), despite not complying with the

procedural rule, if prison officials decide the merits of a grievance at each step of the administrative process. According to the court, the prisoner's grievance was sufficient to exhaust his available remedies under the state prison grievance system. (Mule Creek State Prison, California)

U.S. Appeals Court
RETALIATION

Saylor v. Nebraska, 812 F.3d 637 (8th Cir. 2016). A state inmate filed a § 1983 action alleging that prison officials retaliated against him by transferring and reclassifying him, that the transfer and classification review process violated his due process rights, and that officials were deliberately indifferent to his post-traumatic stress disorder (PTSD). The district court denied the officials' motion for summary judgment, and they appealed. The appeals court reversed. The court held that the prison's medical officials were not deliberately indifferent to the inmate's post-traumatic stress disorder (PTSD), in violation of Eighth Amendment, despite the inmate's contention that treatment that occurred after his treating psychiatrist left the prison rose to the level of cruel and unusual punishment. The court noted that officials attempted to provide the inmate with another psychiatrist at the facility, ultimately found him another psychiatrist at a different facility, continued medication as they saw fit within their independent medical judgment, and gave him his requested private cell.

The court found that the officials' decision to transfer the inmate to another facility and to place him in administrative segregation was not in retaliation for his complaints about his medical care, in violation of the First Amendment, where the reason for the transfer was to provide the inmate with necessary psychiatric care after his treating psychiatrist's contract with the state ended and the inmate refused to meet with the facility's other psychiatrist. The court noted that the inmate was placed in administrative segregation because he refused to share a cell within any other prisoners, and there were no other private cells. (Nebraska Department of Correctional Services, Nebraska State Penitentiary, Tecumseh State Correctional Institution)

U.S. District Court
RETALIATION

Szubielski v. Pierce, 152 F.Supp.3d 227 (D. Del. 2016). A state prisoner, acting pro se and in forma pauperis (IFP), brought a § 1983 action against prison officials, relating to his continuing classification for solitary confinement. At the screening stage of the case, the district court held that the prisoner stated a First Amendment retaliation claim against a prison warden and an Eighth Amendment claim regarding conditions of confinement. The prisoner complained of 24-hour cell confinement, limited recreation, extreme social isolation, environmental deprivation, limited telephone calls, and limited visits. The prisoner suffered from schizophrenia, severe manic depression, and an anxiety disorder. The court found that the prisoner's allegations that the prison warden retaliated against him after a civil rights advocacy organization filed a lawsuit challenging solitary confinement of prisoners, by keeping the prisoner in solitary confinement despite a classification committee's reclassification of the prisoner for medium-security housing, stated a First Amendment retaliation claim. According to the court, the prisoner's allegations that his continued solitary confinement, which had already lasted nine years, involved extreme social isolation, inadequate medical care, limited recreation, and environmental deprivation, stated a claim the under the Eighth Amendment regarding conditions of confinement. (James T. Vaughn Correctional Center, Delaware)

SECTION 22: HABEAS CORPUS

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1830

U.S. Supreme Court

Ex parte Watkins, 28 U.S. 193 (1830). The Supreme Court has no jurisdiction in criminal cases which could reverse or affirm a judgment rendered in the circuit court in such a case, where the record is brought up directly by writ of error. The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the Court by the fourteenth section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the Court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorizes the court, and all the courts of the United States, and the judges thereof, to issue the writ "for the purpose of inquiring into the cause of commitment."

1886

U.S. Supreme Court

Ex parte Royall, 117 U.S. 241 (1886). Circuit courts of the United States have jurisdiction on habeas corpus to discharge from custody a person who is restrained of his liberty in violation of the constitution of the United States, but who, at the time, is held under state process for trial on an indictment charging him with an offense against the laws of the state. When a person is in custody, under process from a state court of original jurisdiction, for an alleged offense against the laws of such state, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted. This discretion should be subordinated to any special circumstances requiring immediate action. After conviction of the accused in the state court, the circuit court has still a discretion whether he shall be put to his writ of error to the highest court of the state, or whether it will proceed by writ of habeas corpus summarily to determine whether he is restrained of his liberty in violation of the Constitution of the United States. The proper time to invoke the jurisdiction of the Supreme Court is after the claim of the accused of immunity from prosecution in the state court has been passed upon by the highest court of the state adversely to him.

1894

U.S. Supreme Court

New York v. Eno, 155 U.S. 89 (1894). Whether an offense described in an indictment in a state court is an offense against the laws of that state and punishable thereunder, or whether it is made by federal statutes an offense against the United States, exclusively cognizable by their courts, and whether the same act may be an offense against both national and state governments, punishable in the tribunals of each, without infringing upon the constitutional guaranty against being twice put in jeopardy of limb for the same offense, are questions which a state court of original jurisdiction is competent to decide in the first instance; and, (its obligation to render such decision as will give full effect to the supreme law of the land, and protect any right secured by it to the accused, being the same that rests upon the courts of the United States), the latter, if applied to for a writ of habeas corpus in such case, should decline to issue it unless it also appears that the case is one of urgency.

1895

U.S. Supreme Court

Bergemann v. Backer, 157 U.S. 655 (1895). When a prisoner is indicted in a state court for murder, it is for the courts of the state to decide whether the indictment sufficiently charges that crime in the first degree. The refusal by the state court to grant a writ of error to a person convicted of murder, or to stay the execution of a sentence, will not warrant a court of the United States in interfering in his behalf by writ of habeas corpus. (New Jersey)

1915

U.S. Supreme Court

Frank v. Mangum, 237 U.S. 309 (1915). The petitioner was formally indicted for murder, placed on trial before a court of competent jurisdiction with a jury lawfully constituted, had a public trial deliberately conducted and with counsel for defense, was found guilty and sentenced pursuant to the law of the state. Subsequently he twice moved the trial court to grant new trial, and once to set the verdict aside as a nullity, and was heard three times on appeal by the court of last resort. In all instances the trial court was affirmed. Petitioner alleged that a hostile public sentiment improperly influenced the trial court and jury against him and in the court-room took the form of mob domination, and that his lawful rights were interfered with because he was not permitted to be present when the verdict was rendered. Held by the Supreme Court that:

The question of deprivation of liberty without due process of law involves not the jurisdiction of any particular court, but the power and authority of the state itself, and where there is no claim that the offense is based on an unconstitutional statute, the question of whether the petitioner in habeas corpus has been deprived of his liberty in violation of constitutional rights cannot be determined, with fairness to the state, until the conclusion of the course of justice in its own courts, and the United States court must consider not merely the proceedings of the trial court, but also those in the appellate court of the state.

Due process of law guaranteed by the fourteenth amendment has regard to substance of right and not to matters of form and procedure. In determining whether one convicted of crime has been denied due process, the entire course of proceedings, and not merely a single step, must be considered.

Although petitioner's allegation that mob domination existed in the trial court might, standing alone and if taken as true, show a condition inconsistent with due process of law, if the record in the habeas corpus proceedings in the federal court also shows that the same allegations had been considered by the state court and upon evidence there taken but not disclosed in the federal court, had been found to be groundless, that finding cannot be regarded as a nullity but must be taken as setting forth the truth until reasonable ground is shown for a contrary conclusion.

The petitioner in this case was not denied due process of law in the conduct of his trial by the courts of first instance or appellate, nor was the decision of the appellate court, by reason of inconsistency with prior decisions, equivalent to an *ex post facto* law. (Georgia)

1923

U.S. Supreme Court

Moore v. Dempsey, 261 U.S. 86 (1923). (1) Upon an appeal from an order of the district court dismissing a petition for habeas corpus upon demurrer, the allegations of fact pleaded in the petition and admitted by the demurrer must be accepted as true. P. 87. (2) A trial for murder in a state court in which the accused are hurried to conviction under mob domination without regard for their rights, is without due process of law and absolutely void. P. 90. (3) In the absence of a sufficient corrective process afforded by the state courts, when persons held under a death sentence and alleging facts showing that their conviction resulted from such a trial, apply to the federal district court for habeas corpus, that court must find whether the facts so alleged are true, and whether they can be explained so far as to leave the state proceedings undisturbed. P. 91. Reversed.

1935

U.S. Supreme Court

Mooney v. Holohan, 294 U.S. 87 (1935). 1.) The due process clause of the fourteenth amendment governs any action of a state through its legislature, its courts, or its executive officers, including action through its prosecuting officers. P. 112. 2.) A criminal conviction procured by the state prosecuting authorities solely by the use of perjured testimony known by them to be perjured and knowingly used by them in order to procure the conviction, is without due process of law and in violation of the fourteenth amendment. P. 112. 3.) It is duty of every state to provide a corrective judicial process for the relief of persons convicted and imprisoned for crime without due process of law; and it is to be presumed that this duty has been complied with. P.113.

4.) In the courts of California the writ of habeas corpus is available for one who is deprived of his liberty without due process of law in violation of the Constitution of the United States. P. 113. 5.) Before the Supreme Court is asked to issue a writ of habeas corpus in the case of a person held under a state commitment, recourse should be had to whatever judicial remedy afforded by the state may still remain open. P. 115.

1941

U.S. Supreme Court

Ex Parte Hull, 312 U.S. 546 (1941). Hull, an inmate in the Michigan State Prison, challenged a prison rule requiring that all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals prepared by inmates be submitted to prison authorities who would forward them to the appropriate court only if the authorities felt they were properly written. Hull initiated this action when his petition for a writ of habeas corpus was sent to the legal investigator for the state parole board, who informed Hull that the petition would be unacceptable to the court. A second effort to send out a petition with his father failed when a guard confiscated the petition.

HELD: In holding the state rule requiring that all legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals prepared by the inmates be submitted to prison authorities who would forward them to the appropriate court only if the authorities felt they were properly written was invalid, the court stated, "The state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus." 312 U.S. at 549.

HELD: The inmates pleading challenging conditions of confinement may also be used to plead cases of action under 42 U.S.C. Section 1983 to which exhaustion of remedies does not apply. 404 U.S. at 251. (State Prison of Southern Michigan)

1948

U.S. Supreme Court

Wade v. Mayo, 334 U.S. 672 (1948). Imprisoned under a Florida state court conviction of a non-capital offense, the petitioner sought release by habeas corpus in a state court, claiming denial of his federal constitutional right to counsel. An appeal from a judgment denying relief was dismissed by the state supreme court on the merits. At the time of the state supreme court's action, its judgment apparently could have rested on an adequate non-federal ground, but in a later case the court made clear that it had decided the federal constitutional question. The United States Supreme Court held: Although the petitioner did not seek certiorari from this Court to review the judgment of the state supreme court, it was within the discretion of the federal district court to entertain an application by petitioner for a writ of habeas corpus and to proceed to a determination of petitioner's federal constitutional claim. Pp. 674-682.

At the commencement of his trial in a Florida state court for the non-capital offense of breaking and entering, petitioner, claiming to be without funds, requested the trial judge to appoint counsel to represent him. The request was refused, the trial proceeded, and petitioner was convicted and sentenced to imprisonment for five years. Petitioner, after exhausting his state remedy, applied to the federal constitutional for right to counsel. The district court found that, at the time of the trial in the state court, petitioner was an inexperienced youth unfamiliar with court procedure and not capable of adequately representing himself. The district court concluded that the refusal of petitioner's request that counsel be appointed for him constituted a denial of due process, contrary to the fourteenth amendment. The United States Supreme Court held: The findings and conclusion of the district court were not clearly erroneous, and it was an error for the circuit court of appeals to reverse the district court's judgment.

1951

U.S. Appeals Court

Stroud v. Swope, 187 F.2d 850 (9th Cir. 1951). "It is not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined." (United States Penitentiary, Alcatraz, California)

1952

U.S. Appeals Court

Adams v. Ellis, 197 F.2d 483 (5th Cir. 1952). It is not the function of the Courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who are illegally confined. (Texas State Penitentiary)

1953

U.S. Supreme Court

Brown v. Allen, 344 U.S. 443 (1953). Where, on direct review of his conviction, a state prisoner's claim of federal constitutional right has been decided adversely to him by the state supreme court and an application to the Supreme Court for certiorari has been denied, he has satisfied the requirement of 28 U.S.C. Section 2254 that state remedies be exhausted before a federal court may grant an application for habeas corpus: (a) It

is not necessary in such circumstances that he pursue in the state courts a collateral remedy based on the same evidence and issues; (b) Section 2254 is not to be construed as requiring repetitious applications to state courts for relief.

On a state prisoner's application for habeas corpus on federal constitutional grounds, the federal district court may take into consideration the proceedings and adjudications in the state trial and appellate courts: (a) Where the state decision was based on an adequate state ground, no further examination is required, unless no state remedy for the deprivation of federal constitutional rights ever existed; (b) Where there is material conflict of fact in the transcript of evidence as to deprivation of constitutional rights, the district court may properly depend upon the state's resolution of the issue; (c) In other circumstances, the state adjudication carries the weight that federal practice gives to the conclusion of a court of last resort of another jurisdiction on federal constitutional issues, although res judicata is not applicable.

On the application of a state prisoner to a federal district court for habeas corpus, when the records of the state trial and appellate courts are before the district court, it is within the discretion of the district court whether to take evidence and hear argument on the federal constitutional issues. The action of the district court in not taking evidence or hearing argument in the case here involved was not an abuse of that discretion.

In 28 U.S.C. Section 2243 and Section 2244, the word "entertain" means a federal district court's conclusion, after examination of the habeas corpus application with such accompanying papers as the court deems necessary, that a hearing on the merits, legal or factual, is proper.

Held: A failure to use a state's available remedy, in the absence of some interference or incapacity, bars federal habeas corpus.

1961

U.S. Supreme Court

Smith v. Bennett, 365 U.S. 708 (1961). A state statute requiring an indigent prisoner of the state to pay a filing fee before his application for a writ of habeas corpus, or the allowance of his appeal in such proceedings will be docketed in a state court, violates the fourteenth amendment. (Iowa State Penitentiary)

1963

U.S. Supreme Court

Gideon v. Wainwright, 372 U.S. 335 (1963). Charged in a Florida state court with a noncapital felony, the petitioner appeared without funds and without counsel and asked the supreme court to appoint counsel for him. This was denied on the ground that the state law permitted appointment of counsel for indigent defendants in capital cases only. The petitioner conducted his own defense about as well as could be expected of a layman, but he was convicted and sentenced to imprisonment. Subsequently, he applied to the state supreme court for a writ of habeas corpus, on the ground that his conviction violated his rights under the federal constitution. The state supreme court denied all relief. **Held:** The right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial, and petitioner's trial and conviction without the assistance of counsel violated the fourteenth amendment. Betts v. Brady, 316 U.S. 455, overruled. Pp. 336-345. Reversed and cause remanded.

U.S. Supreme Court

Jones v. Cunningham, 371 U.S. 236 (1963). A state prisoner who has been placed on parole, under the custody and control of a parole board is "in custody" within the meaning of 28 U.S.C. Section 2241. On his petition for a writ of habeas corpus, a federal district court has jurisdiction to hear and determine his charge that his state sentence was imposed in violation of the federal Constitution. (State Penitentiary, Virginia)

1968

U.S. Supreme Court

Carafas v. Lavalley, 88 S.Ct. 1556 (1968). Under the federal habeas corpus statutory scheme, once federal jurisdiction has attached in the district court, it is not defeated by the prisoner's release before completion of the proceedings. Though the federal habeas corpus statute requires that the applicant "be in custody" when the habeas corpus application is filed, the relief that may be granted is not limited to discharging the applicant from physical custody, the statute providing that "the court...shall dispose of the matter as law and justice require." 28 U.S.C. Section 2243 Overruling Parker v. Ellis 362 U.S. 574 (1960) which held that when a prisoner was released from state prison after having served his full sentence, the Supreme Court could not adjudicate the merits of his claim for relief in his federal petition for a writ of habeas corpus. (New York)

U.S. Supreme Court

Peyton v. Rowe, 88 S.Ct. 1549 (1968). A prisoner serving consecutive sentences is "in custody" under any one of them for purposes of Section 2241 (C)(3) (allowing district courts to issue writs of habeas corpus on behalf of prisoners), and may in a federal

habeas corpus proceeding challenge the constitutionality of a sentence scheduled for future service. Overruling McNally v. Hill, 243, U.S. 131 (1934), Discarding of "Prematurity Doctrine". (Virginia State Penitentiary)

U.S. Supreme Court

Walker v. Wainwright, 390 U.S. 335 (1968), reh'g denied, 390 U.S. 1036 (1968). Whatever its other functions, the writ of habeas corpus is available to test the legality of a prisoner's current detention, and it is immaterial that another prison term might await him if he should establish the unconstitutionality of his present imprisonment. (Department of Corrections, Florida)

1969

U.S. Supreme Court

Gardner v. California, 393 U.S. 367 (1969). Under a system of repeated hearings, where transcripts of habeas corpus proceedings are readily available to judicial and prosecuting officials of the state, and where no suggestion is made that there is any adequate substitute available, transcripts may not be furnished to those who can afford them and denied to those who are paupers. (California Correctional System)

1971

U.S. Supreme Court

Tate v. Short, 401 U.S. 395 (1971). The petitioner, an indigent, was convicted of traffic offenses and fined a total of \$425. Though Texas law provides only for fines for such offenses, it requires that persons unable to pay must be incarcerated for sufficient time to satisfy their fines, at the rate of \$5 per day, which in the petitioner's case meant an 85-day term. The state courts denied his petition for habeas corpus. **Held:** It is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who are unable to pay it. Williams v. Illinois, 399 U.S. 235. Pp. 397-401. 445 S.W.2d 210, reversed and remanded.

U.S. Supreme Court

Wilwording v. Swenson, 404 U.S. 249 (1971) (Per Curiam). A state habeas corpus petition by inmates confined in maximum security at Missouri State Penitentiary challenging conditions and disciplinary measures, but not seeking release, is dismissed. The inmates then brought a federal habeas corpus action. While state habeas corpus proceedings were exhausted, the District Court for the Western District of Missouri dismissed the complaint on the grounds that 28 U.S.C. Section 2254 had not been satisfied as the inmates had not invoked any of a number of possible state remedies. The Eighth Circuit Court of Appeals affirmed and the inmates petitioned the Supreme Court for a writ of certiorari. (Reversed and Remanded.)

HELD: The exhaustion requirement of 28 U.S.C. Section 2254 is merely an accommodation of the federal system designed to give the state an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights. Regardless of the remedy involved, Missouri courts have not granted a single hearing on conditions of confinement in state prisons. 404 U.S. at 250.

HELD: The inmates pleading challenging conditions of confinement may also be used to plead cases of action under 42 U.S.C. Section 1983 to which exhaustion of remedies does not apply. 404 U.S. at 251. (State Penitentiary, Missouri)

1972

U.S. Supreme Court

Humphrey v. Cady, 405 U.S. 504 (1972). Petition for federal habeas corpus challenging the constitutional validity of the statutory procedures for commitment under a state Sex Crimes Act for an indefinite period, for conviction of a misdemeanor offense carrying a maximum one year prison sentence, is entitled to evidentiary hearing on constitutional claims. (Wisconsin Correctional System)

1973

U.S. Supreme Court

Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973). The jurisdiction of a district court considering a habeas corpus petition requires only that the court issuing the writ have jurisdiction over the custody of the prisoner. Thus, a prisoner physically confined in Alabama would petition with Kentucky court for a writ of habeas corpus where Kentucky had lodged a detainer with Alabama concerning the prisoner. (Alabama State Prison)

U.S. Supreme Court

Hensley v. Municipal Court, 411 U.S. 345 (1973). Restraints imposed on a person released on his own recognizance constitute "custody" within the meaning of the federal habeas corpus statute, 28 U.S.C. Section 2241 (c) (3), 2254 (a). (Clara County)

U.S. Supreme Court

Preiser v. Rodriguez, 411 U.S. 475 (1973). Rodriguez and two other New York state prisoners bring a 42 U.S.C. Section 1983 action, in conjunction with a habeas corpus action against Preiser, Correction Commissioner, seeking restoration of good-time credits allegedly unconstitutionally cancelled. The three inmates participated in a conditional

release program by which an inmate serving an indeterminate sentence could earn up to ten days per month good behavior credit toward reduction of his maximum sentence. The credits earned were cancelled as a result of disciplinary proceedings. The requested relief, restoration of the good time credits, would have resulted in the immediate release from confinement of each of the inmates. Viewing the habeas corpus claim as an adjunct to the Section 1983 action, thereby removing the need for exhaustion of state remedies, the U.S. District Court ruled for each of the inmates entitling each to immediate release on parole. Following the Second Circuit Court of Appeal's decision affirming, Preiser sought certiorari from the United States Supreme Court. (Reversed.)

HELD: "[W]hen a state prisoner is challenging the very fact of duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." 411 U.S. at 500.

NOTE: A 42 U.S.C. Section 1983 action does not require that the plaintiff first seek redress in state courts. Where habeas corpus is the exclusive remedy allowed by federal laws, the plaintiff cannot seek the intervention of a federal court until he has first sought and been denied relief in the state courts, if a state remedy is available and adequate. 411 U.S. at 477, See, 28 U.S.C. Section 2254. (New York Department of Corrections)

U.S. Supreme Court

Schneckloth v. Bustamonte, 412 U.S. 218 (1973). During the course of a consent search of a car that had been stopped by officers for traffic violations, evidence was discovered that was used to convict the respondent of unlawfully possessing a check. In a habeas corpus proceeding the court of appeals, reversing the district court, held that the prosecution had failed to prove that consent to the search had been made with the understanding that it could freely be withheld. The United States Supreme Court **heId:** When the subject of a search is not in custody and the state would justify a search on the basis of his consent, the fourth and fourteenth amendments require that it demonstrate that the consent was in fact voluntary. Voluntariness is to be determined from the totality of the surrounding circumstances. While knowledge of a right to refuse consent is a factor to be taken into account, the state need not prove that the one giving permission to the search knew that he had a right to withhold his consent. Pp. 223-249. 448 F.2d 699, reversed.

1976

U.S. Supreme Court

Stone v. Powell, 428 U.S. 465 (1976), reh'g. denied, 429 U.S. 874. The district court held, alternatively, that any error in admission of the challenged evidence was harmless. The court of appeals reversed, concluding that the ordinance was unconstitutional; that respondent's arrest was therefore illegal; and that, although exclusion of the evidence would serve no deterrent purpose with regard to officers who were enforcing statutes in good faith, exclusion would deter legislators from enacting unconstitutional statutes. The court also held that admission of the evidence was not harmless error. The United States Supreme Court **heId:** Where the state, as in each of these cases, has provided an opportunity for full and fair litigation of a fourth amendment claim, a state prisoner may not be granted federal habeas corpus on the ground that evidence obtained through an unconstitutional search and seizure was introduced at his trial. In this context the contribution of the exclusionary rule, if any, to the effectuation of the fourth amendment is minimal as compared to the substantial societal costs of applying the rule.

U.S. Supreme Court

United States v. MacCollom, 426 U.S. 317 (1976). 28 U.S.C. Section 753 (F), which provides for a free transcript for indigent prisoners asserting a claim under 28 U.S.C. Section 2255 (federal habeas corpus), if the trial judge certifies that the asserted claim is not frivolous and that the transcript is needed to decide the issue, does not require that an indigent prisoner be supplied with a free transcript before he files a section 2255 motion.

1979

U.S. Supreme Court

Pilon v. Bordenkircher, 100 S.Ct. 7 (1979). In a federal habeas corpus action, assessing the sufficiency of evidence to support the state court conviction involves the following inquiry: after viewing the evidence in light most favorable to the prosecution, could any rational trier of fact have found the essential element of crime beyond a reasonable doubt? (Kentucky State Prison)

State Appeals Court

Pruitt v. Joiner, 395 N.E.2d 276 (1979). The Indiana Court of Appeals for the Third District has ruled that even where conditions of pretrial detention include "beatings, deprivation of food, detention in solitary cells without bedding, punishment without due process, and denial of medical care, visitation, and mailing privileges," the use of writ of habeas corpus is not a satisfactory method of obtaining relief. The court specifically

refuted the broad use of habeas corpus in the federal system, which was argued by the appellants. "Indiana.. has not chosen to expand the interpretation, this state has taken the strict common law. By statute and judicial interpretation, this state has taken the strict common law position that habeas corpus may be used only to inquire into the legality of the cause of the restraint." Since the appellants did not challenge the legality of their restraint but rather the manner used to accomplish it, the court reversed the lower court decision. In a dissenting opinion one of the three panel judges argued that such a separation of habeas corpus relief from due process considerations should not occur.

Not only has punishment been administered without a trial as required by due process of law, but the punishment administered here could be characterized as cruel and unusual even after trial and conviction...The petitioners are entitled to immediate relief from the Indiana courts. This is not a question of civil rights. It is a question of due process of law; under what conditions does a lawful executive commitment become unlawful as a violation of due process of law?

(Lake County Jail, Indiana)

U.S. Supreme Court

Rose v. Mitchell, 443 U.S. 545 (1979). Held: 1. Claims of racial discrimination in the selection of members of a state grand jury are cognizable in federal habeas corpus and will support issuance of a writ setting aside a conviction and ordering the indictment quashed, notwithstanding that no constitutional impropriety tainted the selection of the petit jury and guilt was established beyond a reasonable doubt at a trial free from constitutional error. Pp. 550-564.

2. As a matter of law, respondents failed to make out a prima facie case of discrimination in violation of the equal protection clause with regard to the selection of the grand jury foreman. Pp. 564-574. 570 F.2d 129, reversed and remanded.

1980

U.S. Appeals Court

Baxter v. Estelle, 614 F.2d 1030 (5th Cir. 1980), cert. denied, 499 U.S. 1085. An inmate must exhaust administrative remedies before seeking habeas review of the loss of good-time. (Texas Dept. of Corrections)

U.S. Appeals Court

Schuemann v. Colorado St. Bd. of Adult Parole, 624 F.2d 172 (10th Cir. 1980). The claim of an abuse of discretion in a state parole proceeding is reviewable by a writ of habeas corpus. (State Board of Adult Parole, Colorado)

U.S. Appeals Court

Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980). A petition for release from improperly imposed administrative segregation is an attack on the fact of duration of confinement and must be maintained on habeas with exhaustion of state remedies before commencement of a federal suit. (State Prison, Reidsville, Georgia)

1981

U.S. District Court

Frazier v. Harrison, 537 F.Supp. 17 (E.D. Tenn. 1981), aff'd, 698 F.2d 1219 (6th Cir. 1982). The petitioner's writ of habeas corpus is dismissed. The petitioner had abused the federal writ by failing to assert in prior applications to the court the new and different grounds currently asserted. The petitioner had presented the identical questions to a state court before filing his earlier federal petitions. (Brushy Mountain Penitentiary, Tennessee)

State Appeals Court

Washington v. State, 405 So.2d 62 (Ct. Crim. App. Ala. 1981). Record of evidence used as basis for a decision is required. Two inmates filed a petition for habeas corpus challenging a disciplinary board's elimination of two years of accrued good time. The circuit court denied relief, and the inmates appealed. The appeals court reversed the lower court decision because a written statement from the fact finders was not provided describing the evidence used to reach the decision and establishing that substantial evidence justified the disciplinary action. (Alabama Prison System)

1982

U.S. District Court

Boudin v. Thomas, 543 F.Supp. 686 (S.D. N.Y. 1982). Administrative detention is terminated and contact visits are restored by Court. A pretrial detainee sought a writ of habeas corpus challenging her confinement in administrative segregation. The United States district court held that administrative detention was to be immediately suspended and contact visits between the petitioner and approved visitors were to be initiated, where the detainee had not committed any act or engaged in any conduct threatening herself, staff or institutional security and was not shown to be an escape risk. The defendants presented only vague assertions in attempts to demonstrate the risks posed by contact visits with her infant son. (Metropolitan Correctional Center, New York)

U.S. Supreme Court

Engle v. Isaac, 456 U.S. 107 (1982). HeId: Insofar as respondents simply challenged the correctness of the self-defense instructions under Ohio law, they alleged no deprivation of federal rights and were entitled to no federal habeas relief under 28 U.S.C. Section 2254. Respondents' habeas petitions raised only one colorable constitutional claim. Pp. 119-123. Respondents are barred from asserting, in federal habeas corpus proceedings, their constitutional claim, which was forfeited before the state courts because of respondents' failure to comply with Ohio Rule of Criminal Procedure 30. Pp. 124-135.

(a) While the writ of habeas corpus is a bulwark against convictions that violate "fundamental fairness," it undermines the usual principles of finality of litigation. Liberal allowance of the writ also degrades the prominence of the trial and costs society the right to punish admitted offenders. Moreover, the writ imposes special costs on the federal system, frustrating both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights. These costs are particularly high when a trial default has barred a prisoner from obtaining adjudication of his constitutional claim in the state courts, and thus, as held in Wainwright v. Sykes, 433 U.S. 72, a state prisoner, barred by procedural default from raising a constitutional claim on direct appeal, may not litigate that claim in a Section 2254 habeas corpus proceeding without showing cause for and actual prejudice from the default. The principles of Sykes are not limited to cases in which the constitutional error did not affect the truth finding function of the trial. Pp. 126-129.

(b) Cause for respondents' defaults cannot be based on the asserted ground that any objection to Ohio's self-defense instruction would have been futile since Ohio had long required criminal defendants to bear the burden of proving such affirmative defense. If a defendant perceives a viable constitutional claim and believes it may find favor in the federal courts, he may not bypass the state courts simply because he thinks they will be unsympathetic to the claim. Nor can cause for respondents' defaults be based on the asserted ground that they could not have known at the time of their trials that the Due Process Clause addresses the burden of proving affirmative defenses. In re Winship, 397 U.S. 358, decided four and one-half years before the first of respondents' trials, laid the basis for their constitutional claim. During the five years following that decision, numerous defendants relied upon Winship to argue that the due process clause requires the prosecution to bear the burden of disproving certain affirmative defenses, and several lower courts sustained this claim. In light of this activity, it cannot be said that respondents lacked the tools to construct their constitutional claim. Pp. 130-134.

(c) There is no merit to respondents' contention that the cause-and-prejudice standard of Sykes should be replaced by a plain-error inquiry. While federal courts apply a plain-error rule for direct review of federal convictions, federal habeas challenges to state convictions entail greater finality problems and special comity concerns. Moreover, a plain-error standard is unnecessary to correct miscarriages of justice. Victims of a fundamental miscarriage of justice will meet the cause-and-prejudice standard. Pp. 134-135. 646 F.2d 1129, 635 F.2d 575, and 642 F.2d 451, reversed and remanded.

State Supreme Court

People ex rel. Martin v. Smith, 457 N.Y.S.2d 390 (Sup. Ct. 1982). Inmate must be advised of the evidence against him, and allowed to comment on the evidence. Following the commencement of a habeas corpus proceeding to obtain release from the special housing unit at a correctional facility, the Supreme Court held that the inmate's procedural rights were violated when: his requested witnesses were interviewed outside his presence; the hearing officer failed to mention any testimony supporting the charge; and the Department of Correctional Services failed to complete a due process hearing within seven days of imposing special confinement following the decision. (Attica Correctional Facility, New York)

U.S. Supreme Court

Rose v. Lundy, 455 U.S. 509 (1982). Title 28 U.S.C. Section 2254(b) and (c) provide that a state prisoner's application for a writ of habeas corpus in a federal district court based on an alleged federal constitutional violation will not be granted unless the applicant has exhausted the remedies available in the state courts. After the respondent was convicted of certain charges in a Tennessee State Court and his convictions were affirmed, he unsuccessfully sought postconviction relief in a state court. He then filed a petition in federal district court for a writ of habeas corpus under Section 2254, alleging four specified grounds of relief. The district court granted the writ, notwithstanding the petition included both claims that had not been exhausted in the state courts and those that had been. The court of appeals affirmed. The United States Supreme Court disagreed, reversing the lower court decisions and remanding the case. 624 F.2d 1100, reversed and remanded.

U.S. Supreme Court

United States v. Frady, 456 U.S. 152 (1982). In 1963, the respondent was convicted of first-degree murder and sentenced to death by a jury in the federal district court for the District of Columbia, which at that time had exclusive jurisdiction over local felonies committed in the District. The Court of Appeals for the District of Columbia Circuit, which then acted as the local appellate court, upheld the conviction but set

aside the death sentence, and the respondent was then resentenced to a life term. The respondent filed a motion in the district court under 28 U.S.C. Section 2255 seeking to vacate the sentence on the ground that he was convicted by a jury erroneously instructed on the meaning of malice, thus allegedly eliminating any possibility of a manslaughter verdict. The district court denied the motion because the respondent failed to challenge the instructions on direct appeal or in prior motions. The court of appeals reversed, holding that the proper standard to apply to the respondent's claim was the "plain error" standard of Federal Rule of Criminal Procedure 52(b) governing relief on direct appeal from errors not objected to at trial, vacated the respondent's sentence and remanded the case for a new trial or entry of a manslaughter judgment. The United States Supreme Court disagreed with the appeals court, **holding**:

1. This Court has jurisdiction to review the decision below and is not required to refrain from doing so on the alleged ground that the decision of the court of appeals was based on an adequate and independent local ground of decision. Pp. 159-162.

2. The court of appeals' use of Rule 52(b)'s "plain error" standard to review respondent's Section 2255 motion was contrary to long-established law.

3. The proper standard for review of respondent's conviction is the "cause and actual prejudice" standard under which, to obtain collateral relief based on trial errors to which no contemporaneous objection was made, a convicted defendant must show "cause" excusing his double procedural default and "actual prejudice" resulting from the errors of which he complains. Pp. 167-169.

4. Respondent has fallen far short of meeting his burden of showing not merely that the errors at his trial created a possibility of prejudice but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. Pp. 169-175. 204 U.S. App. D.C. 234, 636 F.2d 506, reversed and remanded.

1983

U.S. District Court

Breest v. Moran, 571 F.Supp. 343 (D. R.I. 1983). A New Hampshire inmate may be transferred to Rhode Island. Challenging his transfer from a New Hampshire prison to a prison in Rhode Island, an inmate filed a petition for a writ of habeas corpus. The district court found that under New Hampshire law, a prisoner had no continuing right to remain incarcerated at a specific facility. Since he had no such right under state law, he had no protectable liberty interest under the Federal Constitution that would have prevented his transfer to Rhode Island. The prisoner's petition was denied and dismissed. (Adult Correctional Facility, Cranston, Rhode Island)

1985

U.S. Supreme Court
FEDERAL COURTS

Pennsylvania Bur. of Correction v. U.S. Marshals, 106 S.Ct 355 (1985). U.S. Marshals cannot be ordered by federal court to transport state inmates to federal courts. A federal district court had directed state officials to bring five prisoners to the county jail nearest to the court house and had ordered the United States Marshals to bring the prisoners from that jail to the court house to testify in a prisoner's civil rights action against county officials. The Marshals Service appealed the district court order, which was reversed in part by the U.S. Court of Appeals for the Third Circuit. On appeal, the U.S. Supreme Court held that: (1) although statutes require U.S. marshals to obey mandates of federal courts and to transport prisoners if so ordered, the authority to issue the writ must derive from an independent statutory source; (2) statutes do not authorize writ of habeas corpus ad testificandum to be directed to anyone other than the prisoner's custodian; and (3) the All Writs Act does not authorize courts to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate. (Pennsylvania Bureau of Corrections)

1986

U.S. District Court
GOOD TIME

Conley v. Brewer, 652 F.Supp. 106 (W.D. Wis. 1986). A prisoner filed a petition for a writ of habeas corpus, claiming that the good time credits he accumulated while in prison before his release on parole were confiscated without notice or hearing in violation of due process. The district court held that: (1) interpretation of good time as "used up" upon parole release is reasonable, and (2) although parolee might not have been informed that his signing of the parole release form would nullify his accumulated good time credit, his parole officer's silence on that subject did not implicate due process. Good time and parole statutes are susceptible to conflicting interpretations about effect and duration of pre-parole good time credit, so it was not the district court's role to interpret the statute as the court thought best but rather to uphold the United States Parole Commission's interpretation of statutory scheme, even if other reasonable interpretations existed or if different construction appeared wiser. (Federal Correctional Institution, Wisconsin)

U.S. Appeals Court
EXHAUSTION

Dees v. Murphy, 794 F.2d 1543 (11th Cir. 1986). A federal prisoner may not bring a civil rights action directed at the validity of the prisoner's conviction without first exhausting federal habeas corpus remedies. Although concerns about federalism are not present in a suit by a federal prisoner, as they would be in a suit by a state prisoner, the exhaustion requirement remains because habeas corpus is the exclusive initial cause of action when the claim challenges the constitutionality of the conviction. (Florida)

U.S. Appeals Court
JUVENILE

Gibson v. Scheidemantel, 805 F.2d 135 (3rd Cir. 1986). A state prisoner petitioned for a federal habeas corpus. The United States District Court denied the petition on the ground that the prisoner failed to exhaust his state remedies, and the prisoner appealed. The court of appeals held that: (1) the prisoner's ineffective assistance of counsel claim based on counsel's alleged failure to protect his juvenile status had not been fairly presented to the state courts, and thus, had not been exhausted; (2) the prisoner's claim that he was precluded from examination of merits of his claim in a New Jersey court because of his failure to raise the issue either on direct appeal or within five years of entry of his conviction was not sufficient to satisfy an exhaustion requirement; and (3) the prisoner's claim that his request for relief on other habeas claims in state courts would be futile due to the lack of the realistic possibility that his appeal would be successful and therefore did not satisfy an exhaustion requirement. (Avenel Diagnostic Center, New Jersey)

U.S. District Court
PAROLE

Harris v. Martin, 792 F.2d 52 (3rd Cir. 1986). A federal prisoner sought writs of habeas corpus and mandamus in connection with his initial parole hearing, arguing that the Parole Commission applied the wrong guidelines. After the commission was directed to provide the prisoner with a new hearing and also to apply guidelines that existed at the time of his offense, and the prisoner was provided a new initial parole hearing, the prisoner filed motion to direct the Parole Commission to correctly apply the guidelines and release him from federal custody. The United States District Court denied the motion, and the prisoner appealed. The court of appeals held that: (1) the commission may not use the same factor in scoring the prisoner pursuant to the guidelines and as an aggravating factor justifying the decision above guidelines, and (2) the commission could properly consider the amount of heroin involved in the prisoner's drug convictions as an aggravating factor justifying the decision above the guidelines, where the amount of heroin was six times more than that used to set the offense severity under the guidelines. (Pennsylvania)

State Court

In Re Head, 228 Cal. Rptr. 184 (Cal. 1986). Prison inmates who successfully challenged, in a habeas corpus action, procedures under which the prison work furlough program was implemented, sought attorney's fees. The Superior Court awarded fees, and the state appealed. The court of appeals reversed. The Supreme Court held that prisoners were entitled to attorney fees, under the statute granting fees to successful civil claimants, despite the fact that habeas corpus was a special proceeding of a criminal nature, where prisoner's claims could have been presented in a purely civil proceeding. (Department of Corrections, California)

U.S. Appeals Court
RELEASE DATE

Paz v. Warden, Federal Correctional Institution, 787 F.2d 469 (10th Cir. 1986). The Parole Commission's decision not to alter a habeas corpus petitioner's release date was arbitrary and capricious. An offender's inability to accept responsibility for the wrongfulness of his conduct may properly be considered by the Parole Commission in determining that the offender has not been rehabilitated. That is not to say, however, that the commission may require an offender to confess to his crimes as a prerequisite to a finding that the offender has been rehabilitated. In the instant case, the commission went even further and insisted that the petitioner confess to a crime that he was never charged with, much less convicted of. (Federal Correctional Institute at Englewood, Colorado)

U.S. District Court

Richmond v. Ricketts, 640 F.Supp. 767 (D.Ariz. 1986). A delay of six years from the time the habeas petitioner was arrested to the time he was sentenced did not unduly prejudice his ability to locate witnesses or to present evidence at the sentencing hearing. This delay in large part occurred as a result of appellate proceedings instituted by the petitioner. Because the testimony of witnesses he was unable to locate would have been cumulative of testimony actually presented at the hearing, he was not, on the basis of this delay, entitled to habeas corpus relief. (Arizona State Prison)

1987

U.S. District Court

Davis El v. O'Leary, 668 F.Supp. 1189 (N.D.Ill. 1987). A prisoner brought a civil rights lawsuit against the Prisoner Review Board and others, alleging that they discriminated against African-American prisoners by granting parole requests to European-American prisoners at a faster rate than it did the African-American prisoners. The federal district court found members of the Parole Board to be

absolutely immune from Federal Civil Rights liability for parole decisions and the court dismissed the portion of the complaint that implicated the Parole Board. However, the court stated that if the inmates' allegations were proven, it would be proper to issue an injunction against the board's discriminating against parole applicants because of their race. The court denied the prisoner's request for a mandatory injunction ordering the Prisoner Review Board to release him because of a rule enunciated by the U.S. Court of Appeals for the Seventh Circuit in Crump v. Lane, 807 F.2d 1397 (7th Cir. 1986), that a writ of habeas corpus is the sole federal remedy for state prisoners seeking release from prison. (Illinois Prisoner Review Board)

U.S. Appeals Court

Scales v. Mississippi State Parole Bd., 831 F.2d 565 (5th Cir. 1987). A state prisoner incarcerated on two life sentences for two counts of murder filed a pro se complaint attacking denial of parole and asserting that he was being denied equal protection and due process of law under the Fourteenth Amendment in that Mississippi parole statute was unconstitutional. The federal appeals court held that (1) the Mississippi statute conferred absolute discretion on the Mississippi Parole Board, rather than mandating action by the Board, and thus afforded prisoner no constitutionally recognized liberty interest creating a due process entitlement; (2) the prisoner was not denied equal protection by fact that only one black person was member of the Mississippi Parole Board; and (3) to the extent the prisoner was seeking reduction of length of his sentence by asserting his state sentences should not run consecutively, the issue should be determined in first instance on application for habeas corpus. (Mississippi State Prison)

1988

U.S. District Court
DUE PROCESS

Adkins v. Martin, 699 F. Supp. 1510 (W.D. Okl. 1988). An inmate filed a petition for a writ of habeas corpus, challenging the institutional urinalysis testing program that detected his alleged use of contraband drugs. The federal district court dismissed the writ of habeas corpus, ruling that the use of enzyme immunoassay testing of urine samples, in conjunction with other methods, was sufficiently reliable so that use of the test results as evidence in a prison disciplinary proceeding did not violate due process. (Federal Correctional Institution, El Reno, Oklahoma)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Boutwell v. Nagle, 861 F.2d 1530 (11th Cir. 1988), cert. denied, 109 S.Ct. 2452. A prison inmate filed for a writ of habeas corpus, seeking credit for 31 months spent in custody in the State of Washington prior to his extradition to Alabama. The U.S. District Court denied the petition and the inmate appealed. The appeals court found that the inmate, who had escaped from custody in Alabama and was recaptured in Washington, had no due process right to credit against the Alabama sentence for the time served in a Washington jail while challenging the extradition to Alabama. (King County Jail, Seattle, Washington)

U.S. District Court
ARTIFICIAL
INSEMINATION

Goodwin v. Turner, 702 F.Supp. 1452 (W.D. Mo. 1988), affirmed, 908 F.2d 1395 (8th Cir. 1990). An inmate sought habeas corpus relief after the denial of his request that prison authorities assist him in artificially inseminating his wife. The district court found that the inmate had no fundamental constitutional right to father a child through artificial insemination, such as would require the prison officials to render assistance. After appealing this decision, the appeals court, 908 F.2d 1395, found that assuming that a fundamental right to procreate survives incarceration, the regulation of the Bureau of Prisons restricting inmate procreation, including artificial insemination of wives by male inmates, is valid as reasonably related to furthering the legitimate penological interest in treating all inmates equally. The appropriate standard for reviewing a prison restriction on an inmate's fundamental constitutional right is to ask whether the regulation is reasonably related to legitimate penological interests. (United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
PAROLE
EXHAUSTION

Melvin v. Nickolopoulos, 864 F.2d 301 (3rd Cir. 1988). A prisoner filed a pro se Section 1983 action alleging state officials conspired to deny him due process at a parole deprivation hearing. The U.S. District Court dismissed the petition. On appeal, the appeals court, vacating and remanding, found that the prisoner's claim for damages was not mooted by state law denial of his habeas corpus claims; the prisoner could simultaneously seek release in state court and damages for the violation of his civil rights in federal court. A final order of the state court was not considered on appeal since it was not before the district court. In light of a scarcity of the record concerning the state court action, it was not given judicial notice. While the prisoner's receipt of a state law parole deprivation hearing while his related Section 1983 suit was pending rendered his claim for injunctive relief moot, the entire action was not mooted as the prisoner might still be entitled to damages for his confinement during the time he was returned to prison and received an allegedly untimely hearing. (New Jersey Parole Board)

State Supreme Court
DUE PROCESS
DISCIPLINE

People Ex Rel. Reed v. Scully, 531 N.Y.S.2d 196 (Sup. 1988). A prisoner brought a petition for habeas corpus arising from a prison disciplinary proceeding in which he was found in violation of rules for killing another inmate. The state supreme court reversing and annulling, and remanding for further proceedings, found that the mental competence and mental illness of a prisoner must be considered during a prison disciplinary process in determining whether substantial evidence supports a finding of culpability where the prisoner had been adjudicated not guilty by reason of insanity on criminal charges arising from the same conduct or has a well-documented history of serious psychiatric problems. The prisoner must be given an opportunity to submit proof concerning his mental state, have an inmate assistant appointed to advocate on his behalf, and should be able to obtain psychiatric evaluation. The court also found that the habeas corpus proceeding would be converted into one for an Article 78 review, and substantial evidence did not support the hearing officer's determination of culpability given the failure to consider the petitioner's mental state. The court noted that there is no explicit authority for a prisoner having either a federal or a New York State constitutional due process right to an insanity defense in the prison disciplinary setting. In this case, however, in the limited situation where a criminal court has found the prisoner not guilty by reason of insanity, the prisoner's mental condition is a factor which must be considered in deciding whether the disciplinary determination is supported by "substantial evidence." (Greenhaven Correctional Facility, New York)

1989

U.S. Appeals Court
INTERROGATION

Alexander v. State of Conn., 876 F.2d 277 (2nd Cir. 1989), cert. denied, 111 S.Ct. 2831. A state prisoner petitioned for a writ of habeas corpus after his murder conviction was upheld on appeal. The U.S. District Court dismissed the petition, and the prisoner appealed. The court of appeals held that the trial court should have suppressed the second of two confessions the prisoner made to a friend during jail visits because it was elicited in violation of his fifth amendment right to assistance of counsel at custodial interrogations, reversing and remanding the case. According to the court, where a suspect is in an inherently coercive environment such as a jail or a place where his freedom is significantly restricted, any interrogation is in custodial surroundings even though the suspect believes he is speaking to a friend. (Hartford Correctional Center, Connecticut)

State Supreme Court
CONDITIONS OF
CONFINEMENT

Bedell v. Schiedler, 770 P.2d 909 (Or. 1989). An inmate at a women's corrections center petitioned for writ of habeas corpus, alleging that failure to provide adequate ventilation and circulation of clean air violated her constitutional rights against cruel and unusual punishment. The Marion County Circuit Court allowed a motion to dismiss the petition for lack of subject matter jurisdiction. On appeal, the court of appeals affirmed. The State Supreme Court, reversing and remanding, found that a hearing was required on the merits of the inmate's allegations.

The court said that the inmate's allegations that she was unnecessarily suffering clogged sinuses, severe headaches, dry and irritated skin, and a sore throat--and that those health problems would continue unless ventilation problems were remedied--presented unresolved issues of fact "requiring immediate judicial scrutiny." It was no basis for dismissal that she had failed to allege: 1) that she had not suffered her ailments before confinement, 2) that her physical ailments are linked medically to the alleged lack of ventilation, or 3) that she had unsuccessfully sought and undergone medical treatment to alleviate her ailments. These three allegations were not required, since they were all defenses that the prison might have raised but did not. "Construed liberally," the court noted, the inmate had alleged that the "environment in which she is confined unnecessarily subjects her to serious health hazards. If prisoners are entitled to reasonable and necessary medical care, it reasonably follows that they also are entitled to an environment that does not unnecessarily subject them to serious health hazards." (Oregon Women's Correctional Center)

U.S. Appeals Court
DISCIPLINE

Bostic v. Carlson, 884 F.2d 1267 (9th Cir. 1989). An inmate filed pro se petitions for habeas corpus, seeking relief from disciplinary convictions. The U.S. District Court dismissed the petitions and the inmate appealed. The appeals court found that the inmate was not denied due process because a disciplinary hearing was postponed twice. The court also found that the disciplinary committee was not constitutionally required to ascertain that the inmate's guilty plea to the disciplinary charge was voluntary; and the inmate has no claim for ineffective assistance of counsel at a disciplinary hearing.

Habeas corpus jurisdiction is available for a prisoner's claims that he has been denied good-time credits without due process of law, or when he has been subjected to greater restrictions of his liberty, such as disciplinary segregation, without due process of law. It also exists when an inmate seeks deletion of a disciplinary finding from his record if deletion is likely to accelerate the inmate's eligibility for parole.

An eyewitness account by the reporting officer and a statement by an inmate witness that he heard the accused inmate challenge another inmate to fight was sufficient to support disciplinary convictions for fighting with another prisoner and

refusing to obey an order from a member of the staff. The officer's description of the incident in the report as "stealing," rather than as "possession of contraband," did not deprive the inmate of notice and opportunity to present a proper defense. The report described a factual situation that was the basis for the finding of guilt of possession of contraband and alerted the inmate that he would be charged with possessing something he did not own. (Arizona)

U.S. District Court
AIDS

Botero Gomez v. U.S., 725 F.Supp. 526 (S.D. Fla. 1989). A prison inmate who was suffering from Acquired Immune Deficiency Syndrome (AIDS), Stage IV, brought a motion for release on bond pending a determination of his habeas corpus petition. The district court held that the inmate was entitled to release on bond because the treatment provided by the facility in which he was incarcerated did not provide the required continuous medical and psychological care. (MCC, Miami, Florida)

U.S. Appeals Court
EXHAUSTION
TRANSFER

Chitwood v. Dowd, 889 F.2d 781 (8th Cir. 1989), cert. denied, 110 S.Ct. 2219. A prisoner filed a petition for a writ of habeas corpus and the U.S. District Court granted a petition for which appeal was taken. The appeals court found that the transfer of the prisoner to Oklahoma was the only course of action that would insure that the Oklahoma sentence would run concurrently with Missouri, as ordered by a Missouri court. The prisoner had a legitimate expectation that the Missouri Department of Corrections would transfer him to Oklahoma, in which that the expectation was a liberty interest which was protected by due process and enforceable by way of habeas corpus. It was also found by the court that the unconditional release of the prisoner from serving any time remaining on either Missouri sentence may not have been an appropriate remedy. The complete exhaustion of state remedies prior to bringing a habeas corpus petition was excused by special circumstances, including the petitioner's continual good-faith effort to bring his petition before the proper forum and the state officials' failure to take any action to rectify the petitioner's predicament. (Farmington Correctional Center, Missouri)

U.S. District Court
HABEAS CORPUS
RELIEF
DISCIPLINE

Giano v. Sullivan, 709 F.Supp. 1209 (S.D.N.Y. 1989). Based upon a finding in a disciplinary hearing that an inmate was guilty of escape from a prison facility, leaving an assigned area, and setting a fire, the inmate was to be confined in a special housing unit for a period of five years, with no phone, packages, or commissary privileges during the entire period. The inmate sought federal habeas corpus relief. The district court found that the inmate was denied his constitutional right to prepare a defense to charges against him, where the inmate was in a special confinement when he requested and was assigned an employee assistant. The assistant was either unwilling or unable to perform the specific tasks requested by the inmate and in fact provided no assistance whatsoever. Despite protests by the inmate that he was not prepared to proceed with the hearing, and several requests were unsuccessfully made for documentary evidence that the inmate had originally asked the assistant to secure, the hearing officer proceeded with the hearing and refused to turn over documents. It was also found by the court that the circumstances in which the inmate's disciplinary hearing on escape and other charges was conducted, combined with the hearing officer's participation in other escapees' hearings, created an unacceptable risk of unfairness, where both correction officers who testified against the inmate during the hearing remained in the hearing room throughout the entire course of the proceedings, at times interrupting the inmate when he sought to speak on his own behalf. (Ossining Correctional Facility)

U.S. Appeals Court
EXHAUSTION
DISCIPLINE

Greene v. Meese, 875 F.2d 639 (7th Cir. 1989). A federal prisoner brought a civil rights action alleging that he was denied due process of law by being repeatedly subjected to disciplinary sanctions in retaliation for having rejected homosexual solicitations by guards and resisting improper searches having homosexual overtones. He sought restoration of both "good time" credits and parole eligibility status, and payment of damages for being wrongfully punished. The U.S. District Court dismissed the suit for the prisoner's failure to exhaust administrative remedies, and the prisoner appealed. The appeals court found that the prisoner's action was a habeas corpus suit, and thus the prisoner was required to exhaust his administrative remedies before bringing the suit, and the judge should have dismissed the case without prejudice. If a former prisoner seeks not to annul his conviction, but only to obtain an award of damages due to discipline while in prison, the action is a pure damages suit, rather than a habeas corpus suit, and thus the former prisoner does not have to exhaust his administrative remedies before bringing the suit. (Federal Prison, Terre Haute, Indiana)

U.S. Appeals Court
EXHAUSTION
PAROLE

Gwin v. Snow, 870 F.2d 616 (11th Cir. 1989). An inmate brought suits challenging the parole procedures and parole board decisions denying him parole and compassionate leave. The U.S. District Court dismissed the claims, and the inmate appealed and the appeals were consolidated. The appeals court, affirming in part, reversing in part, and remanding the case, found that the inmate's equal protection claim challenging the parole board's denial of compassionate leave was not a habeas corpus claim, and could

be properly asserted under Section 1983 without exhausting state remedies. It was also found that to the extent the inmate's equal protection claims challenging a denial of parole sought earlier release or a damage award for this denial, such claims required an exhaustion of state remedies, but insofar as the complaint requested a change in the parole board's procedure so that the inmate would receive a fair parole decision in the future. The claim could be properly brought under Section 1983. To recover damages for illegal conduct of state officials, even though this conduct was the cause of adding to the length of the prisoner's sentence, a Section 1983 case can go forward without any requirement of exhaustion. (Georgia Board of Pardons and Paroles)

U.S. Appeals Court
PAROLE

Jessup v. U.S. Parole Com'n., 889 F.2d 831 (9th Cir. 1989). The United States Parole Commission appealed from a decision rendered in the U.S. District Court granting a petition for habeas corpus relief on the ground that the Commission had failed to advise the parolee before the revocation hearing of the possible forfeiture of street time. The appeals court found that the parolee did not waive his right to claim a procedural due process violation. The parolee did not have to show that prejudice resulted from a due process violation to obtain relief; but the proper relief for the violation was a rehearing upon proper notice. (Arizona)

U.S. Appeals Court
GOOD TIME

Kalka v. Vasquez, 867 F.2d 546 (9th Cir. 1989). A prisoner filed a habeas corpus petition, contending that he was entitled to work time credit on a one-for-one day basis, rather than a one-for-two day basis, from the time he was available to work until the time he was given work. The U.S. District Court denied the petition, and the prisoner appealed. The appeals court found that the refusal to award the credits on a one-for-one day basis did not violate the prisoner's equal protection rights. Section 2933(b) states that "[w]orktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932." Except for prisoners ineligible pursuant to Section 2932, "every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources." Cal.Penal Code Section 1933(b) (West 1982 & Supp.1989). Section 2933(a) provides that prisoners who were willing to participate but were not assigned work will receive no less credit than is provided under Section 2931: one day for every two served. (California DOC)

U.S. Appeals Court
GOOD TIME

Lewis v. Attorney General of U.S., 878 F.2d 714 (3rd Cir. 1989). A youth offender who was sentenced as an adult during the service of the Youth Corrections Act sentence petitioned for habeas corpus relief, claiming entitlement to good time credits. The U.S. District Court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the petitioner was entitled to good time credits for a period starting from his sentencing as an adult, but not for the time allegedly served under conditions violating his youth sentence prior to adult sentencing. (Federal Correctional Institution, Petersburg, Virginia)

U.S. Appeals Court
GOOD-TIME
TRANSFER

Moss v. Clark, 886 F.2d 686 (4th Cir. 1989). A prisoner who had been convicted of a violation of the District of Columbia code and who had been placed in a federal prison because of overcrowding in the District of Columbia facility filed a habeas corpus petition challenging the constitutionality of provision of the District of Columbia Good Time Credits Act of 1986 denying to such federalized prisoners the more favorable good time credit eligibility available under D.C. law. The district court found that such denial had no rational relationship to the legitimate governmental purpose of relieving overcrowding, and resulted in a denial of equal protection and due process. The claim was properly brought under habeas corpus statute, as it challenged the execution, rather than the legality, of the sentence, and a challenge under that statute was especially appropriate where federal custody did not result from a federal conviction. The appeals court reversed the lower court decision, finding that the rights of prisoners were not violated. (Federal Prison System)

U.S. Appeals Court
GOOD TIME

Raske v. Martinez, 876 F.2d 1496 (11th Cir. 1989) cert. denied, 110 S.Ct. 543. An inmate in a Florida prison sought a writ of habeas corpus claiming that a Florida statute which altered the amount and calculation of gain-time constituted unconstitutional ex post facto law as applied to prisoners such as himself who were convicted of offenses that occurred prior to the statute's passage. Under Florida law, a prisoner who behaves well and diligently performs assigned work can reduce his term of incarceration by earning "gain time." In the district court, the petitioner claimed that the statute that altered the amount and calculation of gain time constituted an unconstitutional ex post facto law as applied to prisoners such as himself who were convicted of offenses that occurred prior to the statute's passage. The U.S. District Court granted the writ, and the state of Florida appealed. The appeals court, affirming the decision, stated that the statute constituted an unconstitutional ex post facto law as applied to the inmate. The statute allowing prisoners to earn only 20 days per month of incentive gain-time constituted an unconstitutional ex post facto law as applied to the Florida inmate who was convicted of offenses that occurred prior to the statute's passage. (Florida Department of Corrections)

U.S. Appeals Court
EXHAUSTION
PAROLE

Thomas v. Georgia State Bd. of Pardons and Paroles, 881 F.2d 1032 (11th Cir. 1989). A prisoner appealed from an order of the U.S. District Court which dismissed his claim under Section 1983 challenging the prison's parole procedures. The appeals court, affirming in part, reversing in part and remanding, found that the prisoner's claim was not a disguised habeas corpus petition and thus, the prisoner could proceed under Section 1983 without first exhausting state remedies. The prisoner alleged that his rights to due process and equal protection of the laws were violated by using arbitrary, capricious, vague, and racially discriminatory practices and procedures when considering him and other similarly situated prisoners for parole. The complaint alleged, among other things, that the Board was racially unbalanced and practiced racial and economic discrimination when deciding whether to grant parole and whether to grant prisoners a face-to-face meeting with the Board members. The plaintiff sought declaratory and injunctive relief and compensatory and punitive damages. (Georgia State Prison)

U.S. Appeals Court
DUE PROCESS
DISCIPLINE

Woodson v. Lack, 865 F.2d 107 (6th Cir. 1989). A Tennessee prisoner filed a habeas corpus action complaining that he was removed from the general prison population and placed in solitary confinement without due process. The U.S. District Court found for the prisoner, and the state appealed. The appeals court, affirming the decision, found that the transfer of the prisoner to administrative segregation was a punishment for a specific rule infraction, rather than a general security measure, and thus entitled the prisoner to notice, a hearing, deliberative decision, and a general statement of reasons. The finding that the prisoner's placement in administrative segregation was based on his alleged participation in a prison riot, a serious rule infraction, rather than general security considerations, was supported by sufficient evidence. According to the court, when placement in segregation is for punishment of a rules infraction, then the full due process required by Wolff v. McDonnell is required, but when placement is in "non punitive segregation to safeguard the institutional security or to conduct an investigation of unresolved misconduct charges, then the much more informal procedural safeguards of Hewitt v. Helms are all that is required." (Tennessee Department of Corrections)

1990

U.S. Appeals Court
HABEAS CORPUS

Abdul-Hakeem v. Koehler, 910 F.2d 66 (2nd Cir. 1990). A prisoner appealed the dismissal of his suit in which he sought a transfer out of the city system into a state or federal prison system because of alleged brutality by prison guards and police officers. The federal district court dismissed the suit on the grounds that a petition for habeas corpus was the prisoner's exclusive avenue for that relief, and that he could not obtain that relief because he failed to exhaust his remedies in the state courts. The appeals court reversed the judgment, dismissing his suit, and remanded it to the district court for further proceedings. The court ruled that a Section 1983 action is the proper remedy for a state prisoner who is making a constitutional challenge to conditions of his prison life, but not to the fact or length of his custody. (Rikers Island, New York)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Barden v. Keohane, 921 F.2d 476 (3rd Cir. 1990). A federal prisoner filed a petition for a writ of habeas corpus after the Bureau of Prisons failed to consider his request to designate a state prison as a place of confinement. The U.S. District Court denied the petition, and appeal was taken. The court of appeals found that the prisoner was entitled to have the Bureau of Prisons consider his request for the purpose of determining whether the prisoner was entitled to credit against a federal sentence for the time spent in state custody, and the Bureau had discretion to order concurrency where the federal sentence was imposed before the state sentence and the state judge clearly intended the sentences to be served concurrently. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
EXHAUSTION

Bauer v. Henman, 731 F.Supp. 903 (S.D. Ill. 1990). A petition for a writ of habeas corpus was brought by a prisoner alleging constitutional violations regarding proceedings before an institution's disciplinary committee. The U.S. District Court found that the prisoner failed to indicate the reason for his failure to exhaust administrative remedies. The prisoner's request for counsel was denied and the motion to dismiss, made by the defendants, was granted. The prisoner's explanation that direct appeal to general counsel regarding his placement in the control unit would have been repetitious and would have further delayed his petition for habeas corpus did not amount to "cause" sufficient to excuse the failure to exhaust administrative remedies. The court also noted that an allegedly indigent prisoner was not entitled to appointed counsel in a habeas corpus proceeding. The prisoner did not need assistance of counsel in order to pursue his administrative remedies. (United States Correctional Institution, Sandstone, Minnesota)

U.S. Appeals Court
HABEAS CORPUS

Capps v. Sullivan, 921 F.2d 260 (10th Cir. 1990). A state inmate sought federal habeas relief from his conviction of trafficking in heroin after exhausting state remedies. The U.S. District Court ordered the inmate released unless the state retried him within 90 days on grounds that the inmate received ineffective assistance of counsel, and the state

warden appealed. The court of appeals, affirming the decision, found that the state trial counsel's failure to request entrapment instruction when the defendant took the stand in his own behalf and admitted all elements of the crime amounted to ineffective assistance of counsel. (New Mexico Pardons and Parole Board)

U.S. Appeals Court
HABEAS CORPUS

Cornell v. Nix, 921 F.2d 769 (8th Cir. 1990). After his murder conviction was affirmed by the Iowa Supreme Court, and initial grant of state post-conviction relief was vacated by the Iowa Supreme Court, the state prisoner sought federal habeas corpus relief. The U.S. District Court denied relief without conducting an evidentiary hearing, and the prisoner appealed. The court of appeals found that the recantation of testimony by a material prosecution witness, of which the defendant was not aware at the time of the postconviction proceedings, warranted a remand for an evidentiary hearing on the question of whether the recantation was in fact newly discovered evidence of the type which would warrant a new trial. (Iowa State Penitentiary)

U.S. Appeals Court
PAROLE

Glumb v. Honsted, 891 F.2d 872 (11th Cir. 1990). A parolee whose parole had been revoked filed a petition for habeas corpus relief. The U.S. District Court entered an order denying the petition, and appeal was taken. The court of appeals affirmed the decision and found that a nonverbatim summary of the accused's parole revocation hearing satisfied a "writing" requirement and provided a sufficient record for review of proceedings, absent some showing of prejudice by the accused. A parole revocation hearing does not require the same panoply of rights owing to defendants in criminal prosecution. (U.S. Parole Commission)

U.S. Appeals Court
GOOD TIME

Jackson v. Thornburgh, 907 F.2d 194 (D.C. Cir. 1990), affirming, 702 F.Supp. 9 (D.D.C. 1988). Female prisoners who were housed in federal prisons after being convicted in District of Columbia courts sought a writ of habeas corpus and challenged the constitutionality of the District of Columbia Good Time Credits Act. The defendants moved for a summary judgment. The U.S. District Court granted the defendants' motion for a summary judgment, and the female prisoners appealed. The district court found that the Act, which reduces the minimum sentence of prisoners in district prisons, did not violate the equal protection rights of the female prisoners, even though long-term female offenders are housed in a federal facility and are not covered by the Act. (District of Columbia Penal Facilities)

U.S. Appeals Court
PAROLE

U.S. v. Ammar, 919 F.2d 13 (3rd Cir. 1990). A defendant convicted of conspiracy and heroin distribution petitioned for writ of habeas corpus. The U.S. District Court considered the petition as a motion to vacate, correct, or set aside the sentence relative to a term of special parole and denied it. On appeal, the court of appeals found that the petitioner's claim that his sentence was imposed in an illegal manner because he was not present at the imposition of the special parole term involved a fundamental defect cognizable in a habeas proceeding. (Federal Bureau of Prisons)

1991

U.S. Appeals Court
PAROLE
RELEASE DATE

Arnold v. Cody, 951 F.2d 280 (10th Cir. 1991). A prisoner sought a writ of habeas corpus based on the contention that amendments to the Oklahoma Prison Overcrowding Emergency Powers Act, as applied to him, violated the ex post facto clause. The United States District Court denied the petition, and the prisoner appealed. The appeals court, reversing and remanding, found that the Oklahoma emergency credit statute amendment which made it more difficult for prisoners who had been denied parole to obtain release imposed an eligibility requirement that had not existed under the earlier statute. As a result, this violated the ex post facto law as applied to the prisoner. (Oklahoma)

U.S. Appeals Court
CONDITIONS OF
CONFINEMENT

Badea v. Cox, 931 F.2d 573 (9th Cir. 1991). A former inmate brought a civil rights action challenging prison officials' denial of his repeated requests for placement in a community treatment center. The U.S. District Court dismissed the case, and the prisoner appealed. The court of appeals, reversing and remanding, found that the proper avenue of relief was a civil rights action, rather than a habeas corpus action; the inmate had been released on parole and no longer sought a transfer to the community treatment center. Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the legality or duration of confinement while a civil rights action is the proper method of challenging conditions of confinement. (Federal Prison Camp, Lompoc, California)

U.S. Appeals Court
PAROLE

Bermudez v. Duenas, 936 F.2d 1064 (9th Cir. 1991). An inmate appealed an order of the U.S. District Court which dismissed a habeas corpus petition. The court of appeals found that parole board members were immune from liability with respect to action taken when processing a parole application, and the inmate was not entitled to be apprised of all the

evidence relied upon by the parole board in denying parole, but Guam statutes created liberty interest in parole if a prisoner met certain conditions. (Guam Parole Services Division)

U.S. District Court
GOOD TIME

Brodheim v. Rowland, 783 F.Supp. 1245 (N.D. Cal. 1991), modified, 993 F.2d 716. A California prisoner filed an amended petition for writ of habeas corpus. The U.S. District Court, granting the writ, found that allowing habitual offenders to earn work time credits, but denying work time credits to prisoners convicted of murder, did not have a rational basis and violated the equal protection clause, since a murderer who had been convicted twice before of violent crimes would be better off than a murderer new to the prison system. The appeals court held that the prisoner had no due process right to continue earning one-to-one work credits since he was ineligible for the program. (Vacaville State Prison, California)

U.S. District Court
EXHAUSTION

Caley v. Hudson, 759 F.Supp. 378 (E.D. Mich. 1991). A petition was filed for writ of habeas corpus in which an inmate challenged his confinement for a parole violation on the grounds that the Michigan Parole Board denied him a revocation hearing by relying on an unconstitutional provision of state law. The U.S. District Court denied the petition, finding that the inmate had available to him a state remedy in the form of state habeas corpus action and his failure to exhaust that remedy required a dismissal of the federal habeas proceeding. (Lakeland Correctional Facility, Michigan)

U.S. Appeals Court
DISCIPLINE

Campbell v. Henman, 931 F.2d 1212 (7th Cir. 1991). Inmates petitioned for habeas corpus relief alleging that they were denied the right to due process because prison officials withheld exculpatory information during a prison disciplinary proceeding. The U.S. District Court denied the petition on the grounds that the inmates were not entitled to a prehearing disclosure of exculpatory evidence, even if it existed, because they failed to request assistance of a staff representative during the hearing; the inmates appealed. The court of appeals, reversing and remanding, found that minimum due process required that the district court conduct an in camera review of the entire investigatory file, not only material relied on to find guilt, to determine whether or not exculpatory information existed, and it also found that the inmates did not waive their opportunity to receive exculpatory information merely because they exercised their option not to have assistance of a staff representative. (United States Penitentiary, Marion, Illinois)

U.S. Appeals Court
EXHAUSTION

Goodwin v. State of Okl., 923 F.2d 156 (10th Cir. 1991). A state prisoner brought a habeas corpus petition seeking declaration that the Oklahoma Prison Overcrowding Emergency Powers Act violated his equal protection rights. The U.S. District court dismissed the petition for failure to exhaust state remedies, and the petitioner appealed. The court of appeals found that exhaustion was not necessary, as the Oklahoma Supreme Court had adversely decided a case identical to the petitioner's, thus rendering appeal to that court unnecessary. (Oklahoma State Penitentiary)

U.S. Appeals Court
TRANSFER
HABEAS CORPUS
RELIEF

Graham v. Broglin, 922 F.2d 379 (7th Cir. 1991). A prisoner petitioned for habeas corpus. The U.S. District Court dismissed the prisoner's action, and the prisoner appealed. The court of appeals, affirming the decision, found that the petitioner's challenge to a rule denying him eligibility for work release on the basis that he had been imprisoned solely for violating his parole should have been brought as a civil rights suit; the challenge to work release was more akin to a civil rights action seeking a different program, location, or environment than to a habeas corpus action seeking quantum change in level of custody, but if a prisoner asks for habeas corpus when he should have brought a civil rights suit, all he has done is mislabeled his suit, and he should be given leave to plead over or mislabeling should simply be ignored. It was also found that a rule denying the prisoner eligibility for work release on the basis that he had been imprisoned solely for violating parole did not deny him equal protection on the grounds that the rule discriminates between persons like himself and persons who are recommitted for having violated their parole but who have also committed some other crime and who are eligible for work release; the prisoners recommitted for having violated their parole but who have also committed some other crime are eligible for work release only after they have completed their original sentence and, as a result, both classes of prisoners are treated identically. (Indiana State Prison)

U.S. District Court
PAROLE

Grenemyer v. Gunter, 770 F.Supp. 1432 (D. Colo. 1991). A petition was filed for writ of habeas corpus. The district court adopted the opinion of a U.S. Magistrate and found that the petitioner had no constitutional right to be released on parole or in any other way before the end of his sentence. The petitioner was convicted and sentenced for sexual assault on a child pursuant to the sex offenses defined in Colorado statute and the

statute's clear language state that if the party had been sentenced pursuant to that statute, the Parole Board had the sole power to grant or refuse to grant parole and the Colorado Supreme Court had ruled that parole was discretionary as to sexual offenders. The fact that the Parole Board, which had previously interpreted the law as requiring mandatory parole for good time for all prisoners, subsequently held that parole for sex offenses was discretionary did not violate an ex post facto clause; there was no retroactive application of a new law but merely a change in the interpretation of the law. The Colorado Supreme Court's interpretation of the Colorado parole statute to give the Parole Board discretion to grant parole to sex offenders was reasonably foreseeable; therefore, the change in the interpretation of the law did not violate due process. It was also found that there was no equal protection violation merely because the Parole Board had previously misinterpreted the Colorado statute, and the petitioner was not subjected to cruel and unusual punishment because the petitioner's sentence had not gone beyond the statutory limits and there was no illegality or abuse of discretion. (Fremont Correctional Facility, Colorado)

U.S. District Court
INTERROGATION
CONDITIONS OF
CONFINEMENT

Hickombottom v. McGuire, 765 F.Supp. 950 (N.D. Ill. 1991). An inmate sued police officers who arrested him alleging that officers arrested him without probable cause, that they failed to properly bring him before a magistrate, that they violated his right to due process by denying him food and water, and that they coerced his confession. The officers moved for summary judgment. The district court found that the arrestee had no civil rights claim based on that fact that police officers questioned him for 11 hours after his arrest without bringing him before a magistrate; 11 hours was not an unreasonable period in which to delay an appearance before a magistrate. It was also found that the arrestee's claims that police officers deprived him of his Fourteenth Amendment right to due process by denying him food and water for an unreasonable length of time while he was in their custody and violated his Fifth and Fourteenth Amendment right not to incriminate himself when they coerced his confession, which were indirect attacks on the arrestee's confinement, were better pressed in a habeas corpus proceeding rather than a Section 1983 proceeding, and to the extent that the prisoner's claims would be proper in a Section 1983 proceeding, they were barred by the circuit court's determination that the prisoner's confession was not coerced. (Danville Correctional Center, Danville, Illinois)

U.S. District Court
DISCIPLINE

Locher v. Plageman, 765 F.Supp. 1260 (W.D. Va. 1991). An inmate brought a Section 1983 action challenging convictions for possession of contraband and a sharpened instrument. The defendants moved for summary judgment. The district court found that the failure to produce the contraband (sugar) and its container at the prison disciplinary hearing did not deprive the inmate of due process, even though the inmate denied the existence of the sugar and container, as the existence of the contraband was found to be based on the credibility of witnesses at the hearing, and no laboratory analysis was required to determine if the substance was sugar. In addition, the inmate had no due process right to a copy of the statements by prosecution witnesses against the inmate in the disciplinary proceeding. It was also found that the inmate's Section 1983 claim to challenge prison convictions for possessing a sharpened instrument and magazine should have initially been brought as a habeas corpus case for which exhaustion of state remedies was required as the core of the claims concerned the duration of the sentence, although the inmate sought monetary damages and injunctive relief. (Patrick Henry Correctional Unit, Virginia)

U.S. District Court
GOOD TIME

Lustgarten v. Gunter, 779 F.Supp. 500 (D. Colo. 1991). A Colorado prisoner filed a petition for writ of habeas corpus. The U.S. District Court recommended the dismissal of the petition. The district court adopted the Magistrate Judge's recommendation that the refusal of the Colorado Parole Board to apply the prisoner's good time credits to his sentence on grounds that the prisoner was a sex offender did not violate the prisoner's equal protection rights; statutory classification providing that sex offenders are to be treated differently from other offenders with regard to parole is rationally related to legitimate state interests, since obedient behavior in prison does not indicate that a sex offender has truly been reformed. In addition, the Parole Board's denial of parole to the sex offender who had accumulated sufficient "good time" credits to render him immediately eligible for release did not constitute cruel and unusual punishment, where the prisoner's sentence was within statutory limits, there had been no showing of illegality or abuse of discretion, and the prisoner's parole had been delayed because the Board still considered him a threat to society. Furthermore, the application to the prisoner of the Colorado's Supreme Court's decision in Thiret v. Kautzky, that a sex offender is not entitled to mandatory parole even if the application of accumulated good-time credits would require immediate release, instead of the contrary practice followed by the Board at the time of the conviction, did not violate due process clause's prohibitions against "judicial ex post facto" actions, and the sex offender's unilateral expectation that good-time credits might be applied to facilitate his early release was insufficient to support his assertion of a constitutionally protected interest, where a Colorado statute left to the

parole board sole discretion whether to grant or deny parole prior to conclusion of a sex offender's sentence. (Colorado)

U.S. Appeals Court
PAROLE
DUE PROCESS

Lynott v. Story, 929 F.2d 228 (6th Cir. 1991). A prisoner appealed an order of the U.S. District Court which dismissed his petition for writ of habeas corpus alleging that the Parole Commission deprived him of a fair and constitutionally adequate parole revocation hearing. The court of appeals found that the prisoner's right against self-incrimination was not violated when his parole revocation was conducted prior to prosecution of criminal charges against him without the benefit of "use" immunity for his testimony; the prisoner's parole was not revoked because he incidentally invoked his right not to testify but, rather, because evidence presented at the hearing sufficiently established that he had violated terms of his parole, and the fact that the prisoner failed to offer exculpatory evidence and failed to call favorable witnesses to testify on his behalf, thereby arguably increasing the impact of his failure to testify, did not enhance his claim. In addition, the prisoner failed to show that he was prejudiced either by alleged impairment of meaningful attorney-client contact by the Parole Commission or by the attorney's failure to call favorable witnesses at his parole revocation hearing, as required to establish a claim of ineffective assistance of counsel. It was also found that, even assuming that documents the prisoner requested from the Parole Commission would have established that the case analyst who was responsible for making certain decisions concerning the prisoner's parole violation case had reason to be biased against him, the prisoner would still not be entitled to habeas corpus relief from the Commission's decision to revoke his parole, inasmuch as the prisoner did not specifically allege bias against any officers who participated in the hearing or who recommended that his parole be revoked, and no document requested bore on the issue of whether the prisoner violated terms of his parole or refuted overwhelming evidence presented against him at the hearing. (Federal Corr. Institution, Ashland, Kentucky)

U.S. District Court
TRANSFER

Miller v. Thornburgh, 755 F.Supp. 980 (D.Kan. 1991). A federal prisoner petitioned for writ of habeas corpus, claiming his transfer from the District of Columbia to a federal penal institution was not constitutionally authorized. The district court found that the prisoner did not have to exhaust all available administrative remedies before petitioning for federal habeas relief. As administrative remedies had to be exhausted when issues involving control and management of a federal prison were involved, whereas the petitioner was challenging the underlying constitution validity of the basis for his incarceration in a federal prison. It was also found that the transfer was statutorily authorized and did not violate the compact clause. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Moreland v. U.S., 932 F.2d 690 (8th Cir. 1991). The defendant's request that time spent at a halfway-house prior to trial and sentencing be credited against his sentence was denied by the Federal Bureau of Prisons, and the defendant petitioned for habeas relief. The U.S. District Court refused to grant relief, and the defendant appealed. The court of appeals found that the defendant was entitled to credit for the time spent at the halfway house since he was in official detention. It is not enough to be subject to some conditions, such as electronic monitoring, a requirement to live with one's parents, and a curfew; one must also be in an institution and be subject to that institution's jail-like rules. The defendant was ordered to reside at the halfway house and was subject to 24-hour supervision. The halfway house was acting as an agent of the criminal justice system, the defendant was physically incarcerated for a substantial part of each day spent there, and was subject to a curfew. Since restrictions placed on the defendant were similar to those imposed on jail prisoners who had work-release privileges, it cannot be contended that he was not in "official detention." (Reentry Services Comm. Treatment Center, Minnesota)

U.S. Appeals Court
EXHAUSTION

Parette v. Lockhart, 927 F.2d 367 (8th Cir. 1991). An Arkansas prisoner filed a habeas petition challenging the validity of a Louisiana detainer. The U.S. District Court dismissed the petition with prejudice, and the prisoner appealed. The court of appeals, affirming the decision, found that the prisoner's petition was subject to dismissal for failure to exhaust available state remedies, where the prisoner had never presented his challenge to Louisiana state court. (Arkansas Department of Correction)

U.S. Appeals Court
DISCIPLINE

Ramer v. Kerby, 936 F.2d 1102 (10th Cir. 1991). An inmate's petition for writ of habeas corpus was denied by the U.S. District Court, and the inmate appealed. The court of appeals found that a prison policy prohibiting prisoners from calling staff members as witnesses in disciplinary proceedings deprived the inmate of due process in those proceedings. However, the inmate's due process rights were not violated, as the disciplinary committee's decision not to consider staff members' testimony rested on the prisoner's refusal to submit written questions, not on the policy prohibiting testimony by staff members, and the inmate was not entitled to a new hearing. In addition, where the

inmate was charged with a major report, the fact that the conduct at issue in the disciplinary proceeding--battery of a peace officer--was also defined as a criminal offense by New Mexico statutes did not mean that the disciplinary committee charged and convicted him under criminal felony law, and thus, the disciplinary committee's interpretation of that statute was immaterial. (New Mexico Correctional Facility, Los Lunas, New Mexico)

U.S. District Court
HABEAS CORPUS

Rial v. McGinnis, 756 F.Supp. 1070 (N.D. Ill. 1991). A pro se inmate brought a Section 1983 action, seeking permission to proceed in forma pauperis. The U.S. District Court found that the inmate's claims which sought relief that would effectively reduce his term of confinement could only be obtained by filing a petition for habeas corpus and, accordingly, his assertion of the claims in the Section 1983 action was frivolous and he was not entitled to permission to proceed in forma pauperis with respect to those claims. (Illinois Department of Corrections)

U.S. Appeals Court
TRANSFER

Stevenson v. Thornburgh, 943 F.2d 1214 (10th Cir. 1991). A prisoner who was transferred from a state prison to a federal prison petitioned for habeas corpus relief. The U.S. District Court denied the petition, and the prisoner appealed. The court of appeals found that the transfer of the prisoner from the state prison to the federal prison pursuant to an agreement between the federal Bureau of Prisons and the Commonwealth of Pennsylvania did not violate the "compact clause" of the United States Constitution. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Travis v. Lockhart, 925 F.2d 1095 (8th Cir. 1991). A state prisoner appealed from an order entered in the U.S. District Court dismissing a habeas petition on the merits. The court of appeals found that the district court should not have interpreted the state crediting statute on the merits of a habeas proceeding. The state prisoner's claim that he was entitled to credit for jail time served prior to his second murder conviction required interpretation of the state crediting statute, which was a matter of state concern and not a proper function of the federal habeas court. (Arkansas Department of Corrections)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Tucker v. Carlson, 925 F.2d 330 (9th Cir. 1991). A former federal prisoner brought an action alleging a violation of his civil rights by the failure of the federal corrections authority to credit the time he spent in state custody toward shortening his federal sentence. The U.S. District Court granted summary judgment in favor of the correctional officials, and the prisoner appealed pro se. The court of appeals found that to the extent that the prisoner challenged the fact or duration of his confinement, his complaint should have been construed as a petition for habeas corpus. It was also found that the federal prisoner was not entitled to have time spent in state custody credited toward shortening his federal sentence rather than toward his reparole date. The federal detainer could not have been the sole reason for the prisoner's denial of bail as he was already serving a state sentence by the time the Parole Commission lodged its detainer, and the alleged relationship between the state and federal acts did not warrant credit. (Federal Corrections Institution, Phoenix, Arizona)

U.S. District Court
TRANSFER

Tyson v. Tilghman, 764 F.Supp. 251 (D. Conn. 1991). A prisoner filed a civil rights complaint and petitioned for writ of habeas corpus, alleging that his transfer to an out-of-state prison was illegal and resulted in false imprisonment. The district court found that the petition for writ of habeas corpus had to be dismissed, where the prisoner did not allege that the issue had been presented to appropriate state courts. In addition, the prisoner maintained no right or justifiable interest in remaining in a Connecticut correctional facility, and therefore the prisoner's challenge under a federal civil rights statute to the authenticity of a state contract regarding the transfer of prisoners to an out-of-state prison failed to state a cognizable constitutional claim, where no Connecticut statute, rule or regulation substantively limited the discretion of the Commissioner of Correction to transfer prisoners. (Connecticut Department of Corrections)

U.S. District Court
CREDIT FOR
TIME SERVED

U.S. v. Browning, 761 F.Supp. 681 (C.D. Cal. 1991). An inmate filed a motion to correct an illegal sentence, challenging the decision of the Federal Bureau of Prisons refusing to give him credit against his sentence for 34 days he spent at home awaiting trial. Treating the motion as a petition for habeas corpus, the U.S. District Court found that the Bureau of Prisons properly determined that the inmate was not "in custody" for purpose of credits against his sentence while he was confined to his home awaiting trial, though the inmate was precluded from leaving his home except for court appearances, visits to his lawyer to assist in his defense, or other absences approved at least 24 hours in advance, and the inmate was required to wear an ankle bracelet electronically connected to a privately operated monitoring center in order to assure his compliance with conditions of release. (Federal Bureau of Prisons)

U.S. District Court
EXHAUSTION
TRANSFER

Venable v. Thornburgh, 766 F.Supp. 1012 (D. Kan. 1991). A petition was filed for writ of habeas corpus in which an inmate complained that he was wrongfully withheld by federal authorities because his transfer from a District of Columbia prison to a federal prison was not authorized. The district court found that the inmate was not required to exhaust administrative remedies before bringing a habeas petition challenging a transfer from a District of Columbia prison to a federal prison. The inmate challenged the underlying constitutional validity of the basis for his incarceration in the federal prison and relief through a federal prison administrative grievance procedure would have been so unlikely that to require exhaustion would serve only as an obstructive formality. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
CREDIT FOR
TIME SERVED

Wickliffe v. Clark, 783 F.Supp. 389 (N.D. Ind. 1991). A defendant whose murder conviction was affirmed by the Indiana Supreme Court petitioned for habeas corpus. The U.S. District Court found that there is no basic constitutional right to guarantee good time credit for good behavior while incarcerated, although states may create such statutory rights, and the denial of credit to "lifers" does not deny due process or equal protection. (Indiana State Prison)

U.S. Appeals Court
PAROLE

Wilson v. Lockhart, 949 F.2d 1051 (8th Cir. 1991). An inmate brought a Section 1983 action challenging his parole eligibility date. The U.S. District Court dismissed the inmate's complaint, and the inmate appealed. The court of appeals, affirming with the district court decision, found that since the inmate was challenging the length of his confinement, his sole federal remedy was a writ of habeas corpus. (Arkansas Department of Corrections)

1992

U.S. Appeals Court
DUE PROCESS
MEDICAL CARE
ACCESS TO COURT

Brownlee v. Conine, 957 F.2d 353 (7th Cir. 1992). A prisoner brought a civil rights action against jail personnel, accompanied by a request to be permitted to proceed in forma pauperis, complaining about the treatment he received while confined in jail awaiting trial. The U.S. District Court dismissed the claims as frivolous, and the prisoner appealed. The court of appeals found that the claim that a jail official turned down requests to return documents needed for a suit that had been confiscated by a guard, and that the suit was dismissed because the documents were not returned, was not frivolous on its face. The detainee's claims that another jail official deliberately loosed mentally ill inmates on the detainee so that they would assault him, and that another official, in retaliation for the detainee's having complained about him to the jail doctor, refused to allow the prisoner to see a dentist though he was in severe pain, were, on their face, perfectly good claims of violations of the right that the due process clause grants persons held in jail awaiting trial to be spared punishment until they are convicted, and they should not have been dismissed as frivolous under the in forma pauperis statute. (Wisconsin, Jail)

U.S. District Court
RELEASE DATE
TRANSFER

Campbell v. Williamson, 783 F.Supp. 1161 (C.D.Ill. 1992). A state inmate brought a civil rights action against various law enforcement and correctional officials, alleging due process violations in connection with his return to prison following his mistaken release. The U.S. District Court dismissed the complaint, finding that the inmate did not have a cognizable liberty interest in remaining free and could be properly detained by local law enforcement officers without a warrant so that he could be returned to state custody. A civil rights action was not the proper vehicle for determining the state inmate's proper release date; the inmate was instead required to exhaust state remedies and then bring a habeas corpus action if he sought immediate or more speedy release. It was also found that even assuming that prison officials failed to remove a disciplinary report from the inmate's file as directed by the disciplinary panel, the presence of the unadjudicated disciplinary report in the inmate's file did not implicate the Fourteenth Amendment, and the inmate, who had been approved for housing at a medium security facility, did not have a constitutionally protected liberty interest in remaining at that facility. (Illinois Department of Corrections)

U.S. District Court
DISCIPLINE

Flanagan v. Warden, U.S. Penitentiary, 784 F.Supp. 178 (M.D. Pa. 1992), affirmed, 6 F.3d 779. An inmate filed a pro se habeas corpus petition, challenging the institution's disciplinary action against him for possessing a weapon. The district court found that evidence supported the finding in the prison disciplinary hearing that the weapon found in the inmate's cell during a routine search belonged to him; he had been the sole occupant of the cell for the past eight months, and the officer who found the weapon testified that it was carefully taped to the bottom of the inmate's locker in such a manner that it had probably been placed there by someone standing inside the cell. The inmate was not entitled to a fingerprint analysis of the weapon or to administer a polygraph examination to prove his veracity as he received notice of the charges against him prior to the hearing, was present at the hearing, and called two inmate witnesses to testify on his behalf, and he had no constitutional right to the grant of his request for "scientific" testing

to establish non-ownership of the weapon. The court also found that the inmate, who was unsuccessful on his pro se habeas corpus petition, was subject to sanctions under Rule 11. The inmate was an attorney who had persisted in filing repeated papers raising groundless objections at every turn of the case, and the only inference which could reasonably be drawn from his conduct was that his sole purpose was to harass the defendants and needlessly prolong and complicate the case. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. Appeals Court
DISCIPLINE
EXHAUSTION
GOOD TIME

Markham v. Clark, 978 F.2d 993 (7th Cir. 1992). A state prisoner applied for federal habeas corpus relief, seeking restoration of good-time credit taken away from him in state prison disciplinary proceedings. The U.S. District Court denied the application, and the prisoner appealed. The court of appeals, affirming the decision, found that the state prisoner had failed to exhaust his state administrative remedies by failing to appeal the disciplinary decision to higher prison authorities as required by state corrections department regulations and was not entitled to federal habeas corpus relief. (Indiana Department of Corrections)

U.S. District Court
CREDIT FOR TIME
SERVED

Medina v. Clark, 791 F.Supp. 194 (W.D. Tenn. 1992), affirmed, 978 F.2d 1259. An inmate filed a petition for a writ of habeas corpus seeking to obtain credit against his sentence. The district court denied the petition, finding that the prisoner was not entitled to credit against his sentence for a period of release from detention on unusually restrictive conditions. The governing statute excluded pretrial and posttrial release subject to house arrest where a defendant was not within the custody of the Attorney General or the United States Marshal. (Tennessee)

U.S. Appeals Court
DISCIPLINE

Miller v. Duckworth, 963 F.2d 1002 (7th Cir. 1992). A petition for habeas corpus was filed by a state prisoner alleging that he was deprived of his due process rights during a prison disciplinary hearing convened to determine if he was guilty of escaping from a youth correctional center. The U.S. District Court denied the petition, and the prisoner appealed. The court of appeals, affirming the decision, found that the inmate was not entitled to the assistance of a lay advocate. Due process did not require that the inmate be appointed a lay advocate unless the inmate was illiterate or the complexity of the issue made it unlikely that the inmate would be able to collect and present evidence necessary for adequate comprehension of the case. The court also found that the inmate was not unconstitutionally prevented from calling witnesses on his own behalf in the prison disciplinary hearing. The prison official's determination that the inmate's request to communicate with other inmates at the state youth correctional facility might pose a threat to security by revealing his escape route to others fell within "the necessary discretion to keep the hearing within reasonable limits." (Indiana State Prison)

U.S. Appeals Court
GOOD TIME

Poole v. Kelly, 954 F.2d 760 (D.C. Cir. 1992). Inmates brought habeas petitions challenging the failure to award good time credit pursuant to a statute. The U.S. District Court granted one petition, and another district court denied another inmate's petition, and the losing parties appealed. The court of appeals found that the inmates were not entitled to good time credit under the statute. The District of Columbia Good Time Credit Act did not supersede a provision of a statute providing for a 20-year minimum year period of incarceration prior to parole eligibility for persons convicted of first-degree murder. (District of Columbia)

U.S. Appeals Court
CREDIT FOR
TIME SERVED

Starchild v. Federal Bureau of Prisons, 973 F.2d 610 (8th Cir. 1992). An inmate applied for a writ of habeas corpus. The U.S. District Court denied the application, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate was not entitled to credit toward his sentence for time spent preconviction under house arrest no matter how restrictive conditions were, as a private home was not jail-type facility. (Federal Bureau of Prisons, Minnesota)

1993

U.S. Appeals Court
RELEASE DATE

Flemming v. Oregon Bd. of Parole, 998 F.2d 721 (9th Cir. 1993). A petition for a writ of habeas corpus was filed by a state prisoner. The U.S. District Court denied the petition, and the petitioner appealed. The appeals court, reversing and remanding, found that the use of an amended state parole regulation, enacted after the defendant's offenses, to calculate the defendant's sentence reduction violated the ex post facto clause. (Oregon)

U.S. District Court
DISCIPLINE
DUE PROCESS

Laird v. McBride, 858 F.Supp. 822 (N.D.Ind. 1993). An inmate filed a habeas corpus petition alleging a violation of due process in proceedings before the Conduct Adjustment Board. The district court found that the disciplinary hearing comported with due process requirements, noting that a district court does not sit in judgment as to prison disciplinary proceedings, except to determine whether there were constitutional errors in those proceedings. (Westville Correction Center, Indiana)

- U.S. District Court
DISCIPLINE Ping v. McBride, 888 F.Supp. 917 (N.D.Ind. 1993) Two state prisoners sought a writ of habeas corpus challenging disciplinary actions taken against them. The district court dismissed the petitions with prejudice finding that the use of confidential informant testimony did not violate the inmates' rights. Noting the "lawyerlike" quality of the petitions, the court "compliments these two pro se petitioners on the legal quality of their presentation." (Branchville Training Center, Indiana)
- U.S. District Court
DISCIPLINE Smith v. Farley, 858 F.Supp. 806 (N.D. Ind. 1993). A pro se prisoner filed for a writ of federal habeas corpus challenging the constitutionality of a state prison disciplinary action taken against him. The district court found that the hearing procedures and a determination of guilt did not violate the prisoner's due process rights. The placement of the prisoner in disciplinary segregation prior to the hearing on the prison disciplinary charge for alleged drug trafficking inside the prison did not violate the prisoner's due process rights. The disciplinary segregation served was credited toward the period of disciplinary segregation imposed following the hearing board determination. (Indiana State Prison)
- U.S. District Court
DISCIPLINE Spaulding v. Collins, 867 F.Supp. 499 (S.D. Tex. 1993). An inmate filed a petition for a writ of habeas corpus complaining of discipline he received after he was found guilty of attempting to escape by originating and possessing a forged court order. The district court found that the inmate's exclusion from portions of the disciplinary hearing during which a correctional officer gave testimony did not violate his due process rights. The hearing officer found that it was necessary to exclude the inmate in order to preserve internal order and discipline and to maintain institutional security. The court also found that denying the inmate permission to cross-examine an informant was not a denial of confrontation and cross-examination rights. Revealing the identity of the informant could pose a high risk of reprisal within the prison and the right to call witnesses in prison disciplinary proceedings is limited. Evidence supported a finding of guilt for attempted escape. (Alfred D. Hughes Unit, Texas Department of Criminal Justice, Institutional Division)
- 1994
- U.S. Appeals Court
HABEAS CORPUS
RELIEF Dunne v. Keohane, 14 F.3d 335 (7th Cir. 1994) U.S. cert denied 114 S.Ct. 2182. An inmate appealed the denial of his petition for habeas corpus relief by the U.S. District Court. The appeals court, affirming the decision, found that the inmate's reclassification from federal to state prisoner had not delayed the expiration of his sentence. (Federal Penitentiary, Terre Haute, Indiana)
- U.S. District Court
PAROLE
RELEASE DATE Gordon v. U.S. Parole Com'n., 841 F.Supp. 176 (E.D.Va. 1994). A federal prisoner, who was convicted of a crime during a period of supervised release, sought a writ of habeas corpus claiming that his parole was improperly calculated. The district court found that the Parole Commission retained jurisdiction over the prisoner because the Commission issued a valid parole violation warrant prior to the final 180 days of the prisoner's maximum term. The time which the "mandatory releasee" spent on supervised release was automatically forfeited when the releasee was convicted of an offense which resulted in a term of incarceration during the time of supervised release. The Parole Commission did not improperly extend the term of the mandatory releasee's sentence by denying credit for time spent on supervised release, after the release was revoked. Although a statute prohibited imposing a parole which, together with "such time as the parolee has previously served," extended the original sentence beyond the maximum term, the time "previously served" referred only to time spent in confinement, not time spent on release. (United States Parole Commission)
- U.S. Appeals Court
DISCIPLINE Henderson v. U.S. Parole Com'n., 13 F.3d 1073 (7th Cir. 1994) U.S. cert. denied 114 S.Ct. 2711. A federal inmate sought habeas relief in connection with prison disciplinary proceedings. The U.S. District Court denied relief, and the inmate appealed. The appeals court, affirming the decision, found that the hearing officer did not violate due process by failing to disclose or summarize evidence exhibited in a closed session that was considered in reaching the decision. Also, the district court was justified in granting the government's motion to consider those exhibits in a closed session. The court found the exhibits to be reliable. (United State Penitentiary, Terre Haute, Indiana)
- U.S. Appeals Court
TRANSFER Hunter v. Samples, 15 F.3d 1011 (11th Cir. 1994). An inmate brought a suit for habeas corpus relief alleging that a federal warden violated the Interstate Agreement on Detainers Act (IADA) when he was transferred from one federal district to another. The U.S. District Court denied the petition, and the inmate appealed. The appeals court, affirming the decision, found that the IADA is an agreement among governments of member states and the United States. Transfers of prisoners within the federal system do not apply. (Federal Prison, Marianna, Florida)
- U.S. Appeals Court
PAROLE Kell v. U.S. Parole Com'n., 26 F.3d 1016 (10th Cir. 1994). A prisoner sought habeas corpus relief following revocation of his parole. The U.S. District Court denied relief and the prisoner appealed. The appeals court found that due process did not require that a parole officer testify as an adverse witness. Also, the Commission could consider the prisoner's drug abuse history in determining to exceed the guidelines even though drug use had been considered in establishing the salient factor score at the time of original incarceration. The

court found that the prisoner had been given adequate notice of the information which the Parole Commission would consider. The court noted that the Parole Commission did not engage in double counting by factoring the parolee's criminal history and past drug use into his salient factor score and then using his drug abuse history and criminal record as aggravating factors warranting reincarceration for a period longer than recommended by the guidelines. The Commission noted that the pattern of the parolee's behavior and his 25-year history of drug abuse were directly related to his serious criminal record and his continued use of drugs during incarceration and while free on parole. (United States Parole Commission)

U.S. Appeals Court
PAROLE
RELEASE DATE

LaChance v. Reno, 13 F.3d 586 (2nd Cir. 1994) U.S. cert. denied 114 S.Ct. 2711. A parolee sought a writ of habeas corpus challenging the Parole Commission's decision to revoke his parole, forfeit release time spent on parole, and thereby extend his release date. The U.S. District Court denied the petition and the parolee appealed. The appeals court, affirming the decision, found that the Commission acted within its discretion by ordering the parolee to forfeit his time served on parole because of his violation of the terms of his parole. The Parole Commission did not lose authority to extend the parolee's original maximum term by ordering forfeiture of his parole time by failing to give the parolee notice of the danger of forfeiture. The parolee was not entitled to a renewed warning since the parolee is on constructive notice of the consequences of violation by the Commission's published regulation. The Commission was not barred from relying on the parolee's careless driving conviction to revoke his time served on parole. (United States Parole Commission)

U.S. District Court
PAROLE

Lewis v. Driskell, 850 F.Supp. 678 (M.D.Tenn. 1994). An inmate sought reconsideration of a judgment dismissing his habeas corpus petition for failure to exhaust state court remedies. The district court granted the motion. It found that the inmate's challenge to a prison regulation affecting his eligibility for parole fell under Section 1983, and could be addressed without first filing a petition for habeas corpus and exhausting state remedies. The inmate did not allege that he was entitled to parole itself, and his lawsuit did not address the actual fact or length of his confinement, but only the regulation pursuant to which the inmate's parole eligibility date could be extended if the inmate was found guilty of assault. (South Central Correctional Center, Clifton, Tennessee)

U.S. District Court
CREDIT FOR TIME
SERVED

Schmanke v. U.S. Bureau of Prisons, 847 F.Supp. 134 (D.Minn. 1994). A federal prisoner petitioned for credit against a federal sentence for days spent in federal custody while awaiting trial on federal charges. The district court found that the petitioner successfully challenged the state sentence while in federal custody. The only legitimate basis for the petitioner's confinement was a federal writ of ad prosequendum, and he was entitled to credit against the federal sentence for the period of time he spent in United State marshal keeping pursuant to the writ. (Federal Bureau of Prisons)

U.S. District Court
PROBATION

U.S. v. Humphress, 878 F.Supp. 168 (D.Or. 1994). A petition for habeas corpus relief was filed requesting that a federal district court vacate a court order which extended the petitioner's three-year term of probation. The district court found that the government did not provide any authority for extension of the three-year probationary term without a hearing and further findings by the court, given that the applicable probation guideline required that the habeas petitioner's probation term be no more than three years without an upward departure. The statute stating that if a defendant violated the conditions of probation at any time prior to the expiration of probation the court may continue him on probation was not applicable because there was no finding that the petitioner had violated a condition of probation. (Oregon)

U.S. District Court
DISCIPLINE

Wade v. Farley, 869 F.Supp. 1365 (N.D. Ind. 1994). An inmate petitioned for habeas corpus relief challenging the Conduct Adjustment Board disciplinary proceedings. The district court found that sufficient probable cause existed to require the inmate to submit to an urinalysis drug test, where a prison official smelled burning marijuana emanating from the inmate's room. In addition, the hearing officer at the disciplinary proceeding sufficiently explained why he refused to call three of the inmate's four requested witnesses who would have testified that marijuana cigarettes had been placed in a common hot water pot for the purpose of explaining the inmate's positive urinalysis test for marijuana. The very high amount of drugs in the inmate's system negated any reasonable inference that consumption of water caused the positive test results, and the defendant admitted he knew he would test positive and attempted to use another's urine in the test. (Indiana State Prison, Michigan City, Indiana)

U.S. Appeals Court
GOOD TIME

Waletzki v. Keohane, 13 F.3d 1079 (7th Cir. 1994). A federal prisoner petitioned for habeas corpus relief to challenge the denial of good-time credits for work performance. The U.S. District Court denied relief, and the prisoner appealed. The court of appeals, affirming the decision, found that the arbitrary denial of good-time credits, resulting in the arbitrary lengthening of imprisonment, cannot be considered harmless or merely a technical violation and is within the habeas corpus jurisdiction of the district court. However, the federal court has no law to apply and is not equipped to evaluate a prisoner's work performance and his claim of arbitrary denial of good-time credits for work while identically situated prisoners received the credits. (Indiana Federal Prison)

U.S. District Court
HABEAS CORPUS
RELIEF

Bennett v. Duckworth, 909 F.Supp. 1169 (N.D.Ind. 1995). An inmate submitted a habeas corpus petition challenging his state criminal conviction. The district court denied the petition, finding that the inmate was not denied access to courts under Bounds where he failed to show how prison officials failed to assist him in perfecting his defense or appeal and did not show any detriment resulting from the actions of prison officials, especially where he was assisted by court-appointed counsel at all relevant times. (Indiana Reformatory)

U.S. Appeals Court
DISCIPLINE

Collazo-Leon v. U.S. Bureau of Prisons, 51 F.3d 315 (1st Cir. 1995). A pretrial detainee subjected to disciplinary sanctions petitioned for a writ of habeas corpus. The U.S. District Court granted the writ and the government appealed. The appeals court, vacating and remanding, found that even if a restriction or condition of confinement may be viewed as having a punitive effect on a pretrial detainee, it is constitutional if it also furthers some legitimate governmental objective and is not excessive. The court found that 90-day disciplinary segregation and a six-month revocation of telephone and visitation privileges were reasonable sanctions for the pretrial detainee's attempted bribe and attempted escape. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
PAROLE

Harper v. Young, 64 F.3d 563 (10th Cir. 1995). A state prisoner challenged the revocation of his preparole conditional supervision status in state court. After exhausting his state remedies he filed a habeas corpus petition which was denied by the federal district court. The appeals court reversed, finding that the prisoner was entitled to Morrissey due process protection before being removed from the prerelease program. The appeals court found that nothing in the regulations which governed the Pre-parole Condition Supervision Program mandates the removal of a participant who is denied parole and that no language suggests that participants may be terminated at will upon denial of parole. The court noted that a prisoner release program that permits a prisoner to exist conditionally in society on a full-time basis more closely resembles parole or probation than more permissive forms of institutional confinement, mandating due process Morrissey protections before removal from the program. The prisoner had received a telephone call from a parole officer informing him he had been removed from the program and he was given five hours to report to the program office where he was returned to prison the same day; he was mailed a four-word explanation of the decision to remove him from the program and he was given no subsequent hearing or any other opportunity to respond to the removal decision. (Oklahoma Pre-parole Conditional Supervision Program)

U.S. District Court
DISCIPLINE
GOOD TIME

Hundley v. McBride, 908 F.Supp. 601 (N.D.Ind. 1995). An inmate filed a habeas corpus petition seeking restoration of good time credits alleging defects in the disciplinary proceedings that resulted in the loss of credits. The district court denied the petition, finding that due process did not require prison officials in a disciplinary case to conduct scientific testing to confirm a correctional officer's direct observation of sexual contact. The court found that evidence supported the disciplinary board's finding that the inmate had engaged in sexual acts with another inmate. (Westville Correctional Center, Indiana)

U.S. District Court
RELEASE

Johnson v. Nelson, 877 F.Supp. 569 (D.Kan. 1995). An inmate filed a petition for writ of habeas corpus and moved for release on bond to seek medical treatment. The district court denied the motion. The court found that the inmate was not entitled to release on bond to his parents home for the sole purpose of receiving medical care for his progressive cancer. The inmate had been convicted of serious offenses and he was being provided medical treatment in a manner consistent with his incarceration. (El Dorado Correctional Facility, El Dorado, Kansas)

U.S. Appeals Court
DISCIPLINE

Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995). A prison inmate who lost good time credits and had other disciplinary sanctions imposed brought a habeas corpus petition alleging violation of his First Amendment rights. The district court denied habeas corpus relief and the appeals court affirmed. The appeals court held that the sanctions against the inmate were necessary to preserve the prison's penological interest in order and did not violate the inmate's First Amendment rights. The inmate was disciplined for writing scurrilous comments about the prison warden in his "jail house lawyer" communications directed to a former inmate outside the prison. The court found that the inmate's letters were not genuine, personal outgoing mail, but rather were diatribes directed at and toward the warden and prison staff; the inmate knew that his letters would be read by staff. (Iowa State Penitentiary)

U.S. District Court
DISCIPLINE

McKinney v. Hanks, 911 F.Supp. 359 (N.D.Ind. 1995). Two prisoners who had been disciplined by prison misconduct adjustment boards brought habeas corpus petitions. The district court held that one inmate did not receive ineffective assistance from a lay advocate and had not been unlawfully induced to enter a guilty plea. The court also found that evidence supported the adjustment board's findings that the inmates had violated prison disciplinary rules. One inmate had damaged State property and was ordered by the board to pay restitution and to serve eight days in disciplinary segregation. The other inmate had threatened a prison employee. (Indiana State Prison)

U.S. District Court
CREDIT FOR
TIME SERVED
PAROLE

Mellette v. Lowe, 881 F.Supp. 499 (D.Kan. 1995). A petition for habeas corpus was filed. The district court found that the parole board was authorized to reconsider and modify credit for "street time" given earlier where, following the parolee's parole, he was convicted of two offenses including driving with a suspended license and public intoxication, and where two of the offenses were punishable under South Carolina law by imprisonment. In addition, the determination that the parolee was not materially in compliance with conditions of his parole, so that the parole board could reconsider and modify credit for "street time" given earlier, was supported by the evidence regarding the parolee's use of alcohol and the failure to report an arrest. The court also found that a conviction obtained after criminal proceedings with due process protections, is sufficient to establish probable cause of a violation of parole. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

U.S. District Court
BAIL

Nowaczyk v. State of New Hampshire, 882 F.Supp. 18 (D.N.H. 1995). A state prisoner petitioned for a writ of habeas corpus based on a claim that the state court unconstitutionally denied bail and later set excessive bail. The district court found that the state court was not required to set any bail for the pretrial detainee who was a federal probationer at the time he was charged with new crimes. In addition, \$250,000 was not an excessive amount to set for bail. The detainee was on federal probation and testimony indicated that the detainee had said that he intended to flee and had threatened the life of a witness. (New Hampshire)

U.S. Supreme Court
BAIL
CREDIT FOR
TIME SERVED

Reno v. Koray, 115 S.Ct. 2021 (1995). A prisoner sought a writ of habeas corpus claiming that he was entitled to credit toward his sentence for time he had spent at a community treatment center while released on bail. The United States District Court denied relief and the prisoner appealed. The U.S. Appeals Court reversed and the government's petition for certiorari was granted. The Supreme Court found that the time spent by a prisoner at a community treatment center while "released" on bail pursuant to the Bail Reform Act was not "official detention" within the meaning of the statute entitling the defendant to "credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." The phrase "official detention" did not refer to restrictive conditions of release on bail under an official order that significantly curtailed a defendant's liberty; rather, credit was available only to those defendants detained in a penal or correctional facility and subject to the control of the Bureau of Prisons. (Allenwood Federal Prison Camp, Pennsylvania)

U.S. District Court
DISCIPLINE
SEGREGATION

Thomas v. Newkirk, 905 F.Supp. 580 (N.D.Ind. 1995). A state inmate filed a habeas corpus action alleging that he had a liberty interest in staying in the general prison population, and that a conduct adjustment board decision placing him in disciplinary segregation failed to comport with due process. The district court granted, in part, the defendant's motion to dismiss, finding that a full Sixth Amendment right to confront and cross-examine witnesses clearly did not apply in prison disciplinary proceedings. The court also found that the conduct adjustment board was not required to find that a preponderance of evidence supported a finding of guilt in order for a disciplinary sentence to be constitutional. However, the court was "unconvinced that the sole answer to the claims in this petition is simply an incantation of Sandin." The court found that there may not be a liberty interest in disciplinary segregation of six months or less, but it is open for debate as to whether segregation for three years presents the type of atypical significant deprivation in which a state might create a liberty interest. (Indiana State Prison)

1996

U.S. District Court
DISCIPLINE

Bonner v. Parke, 918 F.Supp. 1264 (N.D.Ind. 1996). A prison inmate who had been disciplined, following a hearing, with a sanction of placement into disciplinary segregation for three years brought a habeas corpus petition. The district court denied the petition, finding that a three year term of segregation did not impose an atypical and significant hardship on the inmate that would create a liberty interest protected by the due process clause. The court also found that the inmate had received any process he was due prior to the hearing, and that the finding of misconduct was supported by evidence. (Indiana State Prison)

U.S. District Court
DISCIPLINE
GOOD TIME

Broussard v. Johnson, 918 F.Supp. 1040 (E.D.Tex. 1996). Prisoners filed a § 1983 action alleging that a disciplinary hearing violated their civil rights. The district court held that the action which challenged the fact and duration of confinement would be treated as a habeas corpus action. The court found that the prisoner's rights to procedural due process were violated by reliance on the credibility of a confidential informant without independent evaluation, and that competent evidence did not support a finding of guilt. The court noted that the prisoners were singled out from three shifts of 100 workers in an area in which bolt cutters were found, and that evidence did not support the finding that the prisoners were the persons responsible for hiding the bolt cutters. (Eastham Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
DISCIPLINE
TRANSFER

Cardenas v. Wigen, 921 F.Supp. 286 (E.D.Pa. 1996). Three prison inmates who were disciplined and transferred to different facilities when they were found to have violated prison regulations petitioned for writs of habeas corpus. The prisoners had been found responsible for contraband that was discovered in a common area they shared with nine other inmates. The district court

found that prison officials violated the inmates' due process rights by finding that there was a one in 12 chance that the inmates had been responsible for the contraband, because this did not constitute "some evidence" of their guilt and the constructive possession doctrine could not be stretched to such lengths. But the district court denied the inmates' petitions ruling that they could not seek restoration of their prior custodial status or reassignment to the facility at which they had originally been held, noting that the discipline had not negatively impacted on their good time credits. (Federal Correctional Institute, Fort Dix, Pennsylvania)

U.S. Appeals Court
SENTENCE

Downey v. Crabtree, 100 F.3d 662 (9th Cir. 1996). An inmate filed a petition for a writ of habeas corpus claiming he was improperly denied a sentence reduction by the Federal Bureau of Prisons following the completion of a drug treatment program. The district court granted the petition and the appeals court affirmed. The appeals court held that the inmate's conviction for possession of more than 100 grams of methamphetamine was a "nonviolent offense" for the purposes of a sentence reduction statute. The court affirmed the grant of a writ of habeas corpus and a sentence reduction order, rather than remanding the case. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Supreme Court
FEDERAL COURTS

Felker v. Turpin, 116 S.Ct. 2333 (1996). An offender sentenced to death for capital murder petitioned the U.S. Supreme Court for a stay of execution and permission to file a second federal habeas corpus petition. The Court denied the offender's petition. The Court held that a provision of the Antiterrorism and Effective Death Penalty Act, enacted in April 1996, which prevents the Supreme Court from reviewing an appeals court order denying leave to file a second habeas petition, does not repeal the Supreme Court's authority to entertain original habeas petitions. The Court held that the Act's "gatekeeping" mechanism for appeals courts does not apply to do apply to the Supreme Court's consideration of original habeas petitions, but other restrictions in the Act do inform the Court's consideration of original habeas petitions. The Court held that the Act's new restrictions on successive habeas corpus petitions do not amount to an unconstitutional "suspension" of writ, and that the petitioner's claims in this case did not justify the issuance of a writ. (Georgia)

U.S. District Court
SENTENCE

Hines v. Crabtree, 935 F.Supp. 1104 (D.Or. 1996). A prisoner brought a habeas corpus petition alleging that the Bureau of Prisons violated his rights by excluding him from eligibility for a sentence reduction despite his completion of a substance abuse program. The district court granted the petition, finding that the prisoner was entitled to a sentence reduction. The court held that the prisoner's conviction for being a felon in possession of a firearm was a "nonviolent" offense under the statute that permitted the prisoner to seek a sentence reduction. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
DISCIPLINE

Hudson v. Hedgepeth, 92 F.3d 748 (8th Cir. 1996). After exhausting his state postconviction relief remedies an inmate filed a federal habeas corpus action challenging prison disciplinary charges against him. The district court denied the petition and the appeals court affirmed. The appeals court held that due process did not entitle the inmate to counsel substitute to assist in his defense of prison disciplinary charges, even though the disciplinary committee withheld the names of confidential informants and the specific dates of the alleged events. The court also held that the disciplinary committee's refusal to obtain statements from alibi witnesses did not violate the inmate's due process rights. (Iowa Men's Reformatory)

U.S. Appeals Court
SENTENCE
RELEASE DATE

Kass v. Reno, 83 F.3d 1186 (10th Cir. 1996). A prisoner who was transferred from Mexico to the United States under the terms of a prisoner exchange treaty filed a petition for habeas corpus relief challenging his Mexican conviction. The district court denied relief and the prisoner appealed. The appeals court affirmed the lower court decision. The court found that the requirement of the prisoner exchange treaty that the prisoner seeking the transfer must agree not to challenge the Mexican conviction in United States court was not unconstitutional because the prisoner relinquished no vested rights by consenting to the treaty terms; Americans incarcerated in Mexican prisons have no right to relief from United States courts and therefore they lose nothing by consenting to limit themselves solely to Mexican limits after they are transferred. The court also found that the prisoner forfeited potential early release under Mexican law when he agreed to transfer to the United States, and that Mexico had exclusive jurisdiction over the prisoner's claim that Mexican authorities miscalculated his work credits. (Federal Correctional Institution, La Tuna, Texas)

U.S. District Court
DISCIPLINE
DUE PROCESS
GOOD TIME

McPherson v. McBride, 943 F.Supp. 971 (N.D.Ind. 1996). An inmate who had been disciplined for allegedly engaging in sexual acts with another prisoner petitioned for habeas corpus relief. The district court conditionally granted the petition, finding that the inmate's due process rights were denied in a disciplinary hearing because the disciplinary board did not have before it the testimony of an officer which would have directly undercut evidence relied on by the board. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Meeks V. McBride, 81 F.3d 717 (7th Cir. 1996). An inmate filed a habeas corpus petition following a prison disciplinary board's decision to deprive him of good-time credits and to lower the rate at which he would earn good time in the future. The district court denied the petition and the inmate appealed. The appeals court reversed the lower court decision, finding that a

challenged toxicology report was insufficient to support a finding that the inmate had smoked marijuana. The inmate produced exculpatory evidence that negated the reliability of the evidence the disciplinary board used to reach its decision--the toxicology report bore the inmate's name but listed an incorrect prisoner number. There was another inmate in the prison with the same name at the time the urine sample was taken and the two inmates had been confused on one previous occasion. However, the court found that a second disciplinary proceeding following acquittal on the first proceeding did not violate the double jeopardy clause. (Westville Correctional Center, Indiana)

U.S. District Court
SENTENCE

Piccolo v. Lansing, 939 F.Supp. 319 (D.N.J. 1996). A prisoner filed a habeas corpus petition alleging that he was improperly denied a reduction in his sentence even though he had completed a drug treatment program. The district court denied the petition, finding that the Bureau of Prisons was entitled to determine that possession of a firearm by a felon was not a "nonviolent offense" for the purpose of eligibility for a sentence reduction. The court noted that a prisoner who completes a treatment program does not have a due process liberty interest in receiving a sentence reduction. (Federal Correctional Institution at Fort Dix, New Jersey)

U.S. District Court
GOOD TIME

Sesler v. Pitzer, 926 F.Supp. 130 (D.Minn. 1996). A prisoner petitioned for habeas corpus relief alleging that the Bureau of Prisons arbitrarily and capriciously denied him a reduction in sentence following successful completion of a drug rehabilitation program. The district court denied the petition, finding that the Bureau's regulation was authorized by a sentence reduction statute and that the prisoner lacked a due process right in a reduced sentence. (Federal Medical Center, Rochester, Minnesota)

U.S. District Court
CLOTHING
LAUNDRY

Young v. Berks County Prison, 940 F.Supp. 121 (E.D.Pa. 1996). An inmate filed a § 1983 claim alleging that his conditions of confinement amounted to cruel and unusual confinement in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants, finding that the deprivation suffered by the inmate, who was often forced to wear ill-fitting and dirty, torn clothes, was not sufficiently serious to be of a constitutional dimension. The inmate was five feet, eleven inches tall and weighed approximately 300 pounds when he was admitted to the prison. He required size 4X pants and shirts, and he was consistently unable to receive a suitable standard issue of two sets of clothing. The prison did not have enough clothes large enough in stock and had particular difficulty supplying the inmate with pants. The prison permitted the inmate to do his own wash so that he would always have a set of clean clothes. The court noted that the inmate was no doubt caused substantial inconvenience and discomfort, but this did not rise to the level of a constitutional violation. (Berks County Prison, Pennsylvania)

1997

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Aliwoli v. Gilmore, 127 F.3d 632 (7th Cir. 1997). A petitioner sought a writ of habeas corpus which was denied by the district court. The appeals court affirmed in part, vacated in part, and remanded the case. The appeals court found that although the district court erred in applying the amended habeas corpus statute to a petition filed before the Antiterrorism and Effective Death Penalty Act (AEDPA) effective date, automatic reversal was not required. The appeals court could review the denial of the petition using standards applicable before the AEDPA took effect to determine if the district court's decision was proper. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
DEATH PENALTY
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Austin v. Bell, 126 F.3d 843 (6th Cir. 1997). After a federal district court issued a writ of habeas corpus for an inmate who was sentenced to death, state officials appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that the defendant's counsel's failure to investigate and present mitigating evidence during the penalty phase of his case was ineffective assistance. The court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) did not apply to the Tennessee habeas corpus petitioner absent evidence that Tennessee had complied with the statutory requirement that the state provide for the appointment and compensation of competent counsel and reasonable expenses for litigation of postconviction relief. (Tennessee)

U.S. Appeals Court
HABEAS CORPUS
RELIEF

Barry v. Bergen County Probation Dept., 128 F.3d 152 (3rd Cir. 1997). An offender who was convicted of dispensing drugs and sentenced to community service sought habeas corpus relief. The district court granted the petition and the appeals court reversed and remanded. The appeals court determined that as a matter of first impression, a community service obligation rendered the petitioner "in custody" under the habeas statute because he was subject to restraints on his liberty that were not shared by the public generally. (Bergen County Probation Department, New Jersey)

U.S. District Court
DISCIPLINE
GOOD TIME

Burnell v. Coughlin, 975 F.Supp. 473 (W.D.N.Y. 1997). A state inmate filed a pro se § 1983 action seeking money damages for alleged due process violations relating to a prison disciplinary action. The district court granted summary judgment for the defendants, finding that the loss of one year's good time credits implicated a constitutionally protected liberty interest of real substance, but that the inmate could not pursue money damages under §

1983 without showing that the disciplinary decision had already been invalidated. The court noted that the proper procedure would be to attack the results of the disciplinary hearing directly by appeal, habeas corpus petition, or another collateral attack. The court also found that the inmate's request that the misbehavior report be expunged from his prison record was a form of relief only available by a habeas corpus petition, not under § 1983. (Attica Correctional Facility, New York)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Calderon v. U.S. Dist. Ct. for Cent. Dist. of CA., 127 F.3d 782 (9th Cir. 1997) cert. denied 118 S.Ct. 1395. The appeals court held that the statute of limitations under the Antiterrorism and Effective Death Penalty Act (AEDPA) was applicable to an inmate even though the inmate's request for counsel pre-dated enactment of AEDPA. The court also held that the statute of limitations was not tolled by the inmate's alleged mental incompetence. (U.S. District Court, Central District of California)

U.S. District Court
SENTENCE REDUC-
TION

Camper v. Benov, 966 F.Supp. 951 (C.D.Cal. 1997). A prisoner challenged the federal Bureau of Prisons's (BOP) denial of early release following his completion of a substance abuse program. The district court held that the BOP properly excluded the prisoner from eligibility for early release based on a prior state conviction for robbery. (FCI Terminal Island, California)

U.S. Appeals Court
SEGREGATION

Carson v. Johnson, 112 F.3d 818 (5th Cir. 1997). A prisoner who was proceeding pro se and in forma pauperis filed a petition seeking a writ of habeas corpus, challenging his confinement in administrative segregation. The district court construed the petition as a § 1983 action and barred the prisoner from proceeding in forma pauperis. The prison appealed and the appeals court dismissed the action, finding that the district court had properly construed the action as a § 1983 suit and therefore the three strikes section of the Prison Litigation Reform Act (PLRA) applied. The court also found that the three strikes section of PLRA did not violate the prisoner's due process right of access to courts, nor did the three strikes section violate the prisoner's equal protection rights, even though it did not apply to nonprisoners. (Texas Department of Criminal Justice)

U.S. Appeals Court
GOOD TIME

Clarke v. Stalder, 121 F.3d 222 (5th Cir. 1997). A state inmate who was convicted of violating a Louisiana corrections rule that prohibited inmates from threatening employees with legal redress during a "confrontation situation" filed a § 1983 action alleging violation of his First Amendment free speech rights. The district court declared the prison rule unconstitutional, ordered restoration of the inmate's good time credits, and denied the retaliation claim. All parties appealed. The appeals court held that a habeas corpus petition was the proper vehicle for the inmate to employ in pursuing his claim that he was entitled to damages and for the return of his good time credits. The appeals court found that the prison rule was facially invalid, and that the record supported the denial of the retaliation claim. The disputed rule provided, in part "DEFLANCE (Schedule B): ...No prisoner shall threaten an employee in any manner, including threatening legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation and certainly does not mean the actual composition or filing of a writ, suit, etc; threatening to write to the Secretary, the Warden, or other institutional officers is not a violation." (Work Training Facility at Pineville [Camp Beauregard], Louisiana)

U.S. Appeals Court
SENTENCE
REDUCTION

Cort v. Crabtree, 113 F.3d 1081 (9th Cir. 1997). Prisoners who had been convicted of unarmed robbery sought habeas corpus relief when the Federal Bureau of Prisons refused to allow a one-year sentence reduction upon completion of a substance abuse program. The district court denied the petition and the prisoners appealed. The appeals court reversed and remanded, finding that the Bureau's new definition of "nonviolent offense" could not be applied retroactively to prisoners who were already in a treatment program on the date of its adoption, or to prisoners who were already found to be eligible. (Federal Corr. Institute, Sheridan, Oregon)

U.S. District Court
SENTENCE REDUC-
TION

Davis v. Beeler, 966 F.Supp. 483 (E.D.Ky. 1997). A federal prisoner filed a pro se petition for a writ of habeas corpus challenging a Bureau of Prisons (BOP) determination that he had been convicted of a violent offense, thereby making him ineligible for early release under a federal statute. The district court found that while the substantive decision of whether to grant or deny early release is precluded from judicial review by statute, the court has jurisdiction to claim that the BOP's interpretation of the statute is contrary to well-settled case law. The court found that absent a binding precedent in the Sixth Circuit which held that the crime of being a felon in possession of a firearm is not a crime of violence, the BOP could deny eligibility to the prisoner. The court noted that U.S. Sentencing Guidelines, which state that the crime of being a felon in possession of a firearm is not a crime of violence, are not a relevant body of binding case law. (FCI-El Reno, Kentucky)

U.S. District Court
SENTENCE

Egan v. Hawk, 983 F.Supp. 858 (D.Minn. 1997). An inmate petitioned for habeas corpus relief challenging the denial by the Federal Bureau of Prisons (BOP) of a one-year reduction in his sentence for completing a Residential Drug Abuse Program (RDAP). The district court found invalid a section of the BOP Program Statement that stated inmates convicted of drug related offenses who received two-level sentencing enhancements were not eligible for sentencing reductions that were available to inmates who had been convicted of nonviolent offenses. The

court noted that sentencing enhancements affected the sentence only and did not transform a drug-related offense into a violent offense. The court remanded the matter to the BOP to determine eligibility because the court lacked the authority to declare the inmate automatically eligible for release. (Federal Medical Center, Federal Bureau of Prisons)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act
GOOD TIME
DUE PROCESS

Hallmark v. Johnson, 118 F.3d 1073 (5th Cir. 1997). Several prisoners petitioned for habeas corpus relief raising a common challenge to a state directive that eliminated corrections officials' discretion to restore previously forfeited good time credits. The district court denied the petitions and the appeals were consolidated. The appeals court affirmed in part, dismissed in part, and remanded. The appeals court found that the directive did not result in an ex post facto violation and that the prisoners had no liberty interest in the restoration of their good time credits. The appeals court found that it lacked jurisdiction over one appeal because the district court failed to grant or deny a certificate of probable cause (CPC). Under the Antiterrorism and Effective Death Penalty Act (AEDPA), once the district court has denied a habeas corpus petitioner's application for a certificate of probable cause, the appeals court had no jurisdiction to hear an appeal from denial of habeas relief unless the appeals court granted CPC. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
DISCIPLINE
GOOD TIME

Hayes v. McBride, 965 F.Supp. 1186 (N.D.Ill. 1997). An inmate petitioned for a writ of habeas corpus, challenging sanctions imposed in a prison disciplinary hearing. The district court granted the petition, finding that the inmate was denied due process. The court found that a demotion in the inmate's credit time-earning class and deprivation of his previously earned credit time were liberty interests that could not be deprived without due process. According to the court, the inmate's alleged admission that a yellow-orange substance found in his cell during a shakedown was alcohol was insufficient to establish that the inmate had possessed an intoxicant absent evidence establishing that the substance found in the cell was an intoxicant. (Westville Correctional Facility, Indiana)

U.S. District Court
DISCIPLINE

Hester v. McBride, 966 F.Supp. 765 (N.D.Ind. 1997). A state prison inmate petitioned for a writ of habeas corpus challenging a disciplinary proceeding. The district court held that the inmate's loss of earned credit time created a liberty interest that could not be deprived without due process, but that the inmate had received requisite due process protection during a conduct adjustment board's (CAB) hearing. The court found that sufficient evidence supported the CAB decision and that the inmate's due process rights were not violated by the CAB's refusal to administer polygraph examinations of witnesses, nor by the non-disclosure of confidential witnesses' identities or testimony. The court also held that the inmate could not maintain a claim of ineffective assistance based on the performance of a lay advocate in the disciplinary hearing. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Holman v. Gilmore, 126 F.3d 876 (7th Cir. 1997). After a federal district court granted habeas corpus relief to a state inmate who had been sentenced to death, the state appealed. The appeals court reversed and remanded with instructions, finding that the Antiterrorism and Effective Death Penalty Act (AEDPA) applied to the inmate's petition which was filed after AEDPA's effective date, even though the inmate had requested the assistance of counsel prior to AEDPA's effective date. (Illinois)

U.S. Appeals Court
SENTENCE
REDUCTION

Jacks v. Crabtree, 114 F.3d 983 (9th Cir. 1997). Inmates who were convicted of nonviolent offenses and who had completed a drug treatment program had applied for sentence reductions under a statute that gave the U.S. Bureau of Prisons discretion to give a one-year reduction to such inmates. The Bureau denied the applications and the inmates petitioned for writs of habeas corpus. The district court denied the petitions and the inmates appealed. The appeals court affirmed, finding that the Bureau had the discretion to promulgate a regulation that categorically denies a sentence reduction to an inmate who had a prior conviction for a violent offense. (United States Bureau of Prisons)

U.S. District Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Jenkins v. Cain, 977 F.Supp. 1255 (W.D.La. 1997). A state inmate filed a federal petition for a writ of habeas corpus. The district court dismissed the petition, finding that the one-year limitation set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applied to the inmate's petition, which was filed subsequent to the Act's enactment but which related to matters occurring prior to enactment. The court held that AEDPA's limitation period for habeas petitions regulated only secondary conduct and, therefore, did not have a retroactive effect. (Louisiana State Penitentiary)

U.S. District Court
SENTENCE REDUC-
TION

Johnson v. Crabtree, 996 F.Supp. 999 (D.Or. 1997). An inmate filed a habeas petition challenging the denial of a sentence reduction by the Bureau of Prisons (BOP) following his completion of a drug and alcohol treatment program. The district court granted the motion, finding that the BOP should have regarded the inmate's crime of being in possession of explosives as a "nonviolent offense" for the purposes of a sentence reduction statute. The court held that if a crime has been held "nonviolent" by the Ninth Circuit for the purposes of Sentencing Guidelines, the BOP must also consider it "nonviolent" for the purposes of the statute that authorizes the BOP to grant a sentence reduction to prisoners who successfully complete drug and alcohol treatment programs. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act

Kincade v. Sparkman, 117 F.3d 949 (6th Cir. 1997). A prisoner petitioned for habeas corpus in two separate actions and the district court denied relief. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) did not apply to either petition. But the appeals court noted that if a prisoner proceeding in forma pauperis attempts to "cloak" another civil action, such as an alleged civil rights violation, under the auspices of a petition for habeas corpus or a petition for postconviction relief, the district court must assess the prisoner the applicable PLRA filing fee. (Kentucky)

U.S. Supreme Court
FEDERAL COURTS

Lindh v. Murphy, 117 S.Ct. 2059 (1997). Wisconsin tried petitioner Lindh on noncapital murder and attempted murder charges. In response to his insanity defense, the State called a psychiatrist who had examined Lindh but who had come under criminal investigation for sexual exploitation of patients before the trial began. Lindh's attempt to question the doctor about that investigation in hopes of showing the doctor's interest in currying favor with the State was barred by the trial court, and Lindh was convicted. He was denied relief on his direct appeal, in which he claimed a violation of the Confrontation Clause. He raised that claim again in a federal habeas corpus application, which was denied, and he promptly appealed. Shortly after oral argument before the Seventh Circuit, the Antiterrorism and Effective Death Penalty Act of 1996 (Act) amended the federal habeas statute (110 Stat. 1214, signed into law on April 24, 1996, enacted as 28 U.S.C. Sec. 2254(d)). Following an en banc rehearing to consider the Act's impact, the court held that the amendments to chapter 153 of Title 28, which governs all habeas proceedings, generally apply to cases pending on the date of enactment; that applying the new version of 28 U.S.C. Sec. 2254(d) -- which governs standards affecting entitlement to relief -- to pending cases would not have a retroactive effect barring its application under Landgraf v. USI Film Products, 511 U.S. 244, because it would not attach new legal consequences to events preceding enactment; and that the statute applied to Lindh's case. Held: since the new provisions of Chapter 153 generally apply only to cases filed after the Act became effective, they do not apply to pending noncapital cases such as Lindh's. The opinion, delivered by Justice Souter, stated: "The Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, signed into law on April 24, 1996, enacted the present 28 U.S.C. Sec. 2254(d) (Supp. 1997). The issue in this case is whether that new section of the statute dealing with petitions for habeas corpus governs applications in noncapital cases that were already pending when the Act was passed. We hold that it does not." (Wisconsin)

U.S. District Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act
EXHAUSTION

Martin v. Jones, 969 F.Supp. 1058 (M.D.Tenn. 1997). A convicted murderer sought a writ of habeas corpus. The district court held that petitions for habeas corpus based on final judgments rendered before enactment of the Antiterrorism and Effective Death Penalty Act (AEDPA) must be filed within one year of enactment of the Act, and that the limitations period for habeas corpus petitions does not begin to run until both direct review and postconviction review have been exhausted. The district court dismissed the petition without prejudice rather than denying the petition. (Morgan County Regional Correctional Facility, Tennessee)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Nobles v. Johnson, 127 F.3d 409 (5th Cir. 1997). A defendant who was convicted of murder and sentenced to death petitioned for habeas corpus relief. The district court denied the petition. The appeals court affirmed, finding that the Antiterrorism and Effective Death Penalty Act (AEDPA) applied to his petition even though his motion for appointment of counsel and to proceed in forma pauperis was filed prior to the AEDPA effective date, because the actual petition was filed after the effective date. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
SENTENCE
RELEASE DATE

Paydon v. Hawk, 960 F.Supp. 867 (D.N.J. 1997). An inmate filed an application for habeas corpus alleging that the Federal Bureau of Prisons improperly denied him eligibility for a reduction in his sentence. The district court found that the Bureau's determination that the inmate was ineligible for a sentence reduction was not arbitrary, capricious or an abuse of discretion. The court found that the inmate lacked a liberty interest in a sentence reduction for the purposes of a due process analysis, and that the Bureau's decision to classify possession of a firearm by a convicted felon as a crime of violence was rationally related to the Bureau's legitimate interests. The court noted that the Violent Crime Control and Law Enforcement Act of 1994 merely conferred additional benefits to certain inmates as an incentive for participating in drug treatment and rehabilitation, and thus did not violate the ex post facto clause. (Federal Correctional Institution, Fort Dix, New Jersey)

U.S. Appeals Court
EX POST FACTO

Plyler v. Moore, 129 F.3d 728 (4th Cir. 1997). State inmates sued a director of corrections alleging ex post facto violations arising from the application of an amended supervised furlough statute to inmates who were not within six months of the expiration of their sentences at the time of the amendment. The district court enjoined application of the statute to the plaintiffs. The appeals court affirmed, finding that retroactive application of the statute to the plaintiff inmates violated the ex post facto clause of the United States Constitution. The amended statute limited the class of inmates entitled to mandatory release on furlough six months prior to the expiration of their sentences, which had the effect of increasing the length of incarceration of those who would have been eligible before the amendment was enacted. (South Carolina Department of Corrections)

<p>U.S. Appeals Court AEDPA-Antiterrorism & Effective Death Penalty Act SENTENCE</p>	<p><u>Poland v. Stewart</u>, 117 F.3d 1094 (9th Cir. 1997). A petitioner sought habeas corpus relief from his murder conviction and death sentence. The district court denied relief and the prisoner appealed. The appeals court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) did not apply to habeas corpus cases filed before the Act's effective date. The court also ruled that execution by lethal injection was not shown to be cruel and unusual punishment. (Arizona Department of Corrections)</p>
<p>U.S. District Court DISCIPLINE</p>	<p><u>Rice v. McBride</u>, 967 F.Supp. 1097 (N.D.Ind. 1997). An inmate petitioned for a writ of habeas corpus alleging due process violations in connection with a prison disciplinary hearing. The district court denied the petition and dismissed the case, finding that the inmate had received requisite due process protections in his hearing. The court held that the failure of the disciplinary board or the investigator to obtain a statement from the inmate's wife and provide the statement to the inmate did not invalidate the board's finding that the inmate had threatened her life and that of her boyfriend. (Lakeside Correctional Facility, Indiana)</p>
<p>U.S. Appeals Court EARLY RELEASE</p>	<p><u>Roussos v. Meniffee</u>, 122 F.3d 159 (3rd Cir. 1997). A federal prison inmate filed a habeas corpus petition challenging a Federal Bureau of Prisons ruling that he was ineligible for a sentence reduction upon his completion of a drug treatment program. The district court denied relief and the inmate appealed. The appeals court vacated and remanded, finding that a firearm enhancement under Sentencing Guidelines does not, by itself, make an inmate ineligible for a sentence reduction. According to the court, the Bureau of Prison's program statement under which the inmate was deemed to have committed a "crime of violence" was in conflict with the governing statute and implementing regulations because it categorized the inmate as ineligible due to his receipt of a two-level firearms enhancement under the Sentencing Guidelines. (United States Penitentiary, Allenwood, Pennsylvania)</p>
<p>U.S. District Court DISCIPLINE</p>	<p><u>Rowold v. McBride</u>, 973 F.Supp. 829 (N.D.Ind. 1997). A prisoner petitioned for habeas corpus relief from his conviction in a prison disciplinary proceeding. The prisoner alleged that he was ordered to perform extra work duty on his religious day of rest. The district court held that the record supported the guilty finding under the "some evidence" standard. The court found that the prison's interest in assigning extra work duty to the inmate was legitimate and that prison officials did not have to implement other alternatives to prove that the regulation was the least restrictive means available. According to the court, it was neither arbitrary nor irrational to require inmates to perform additional work duty in response to various violations they have committed while incarcerated. (Plainfield Correctional Facility, Indiana Youth Center)</p>
<p>U.S. Appeals Court SENTENCE RELEASE DATE</p>	<p><u>Sesler v. Pitzer</u>, 110 F.3d 569 (8th Cir. 1997). A prisoner petitioned for habeas corpus relief alleging that the Federal Bureau of Prisons had arbitrarily and capriciously denied a reduction in his sentence following his successful completion of a drug rehabilitation program. The district court denied the writ and the prisoner appealed. The appeals court affirmed, finding that the use of a firearm during and in relation to a drug trafficking crime is not a "nonviolent offense" within the meaning of a statute allowing reduction of sentence following the completion of a treatment program. (Federal Bureau of Prisons)</p>
<p>U.S. District Court SENTENCE REDUCTION</p>	<p><u>Sisneros v. Booker</u>, 981 F.Supp. 1374 (D.Colo. 1997). A prisoner brought a habeas proceeding challenging the denial of his sentence reduction. The district court granted the petition, finding that the Bureau of Prisons could not adopt a rule denying a one year reduction in sentence to a prisoner who committed a nonviolent crime but whose sentence had been enhanced for the possession of unused weapons. The court equitably estopped the Bureau from denying the prisoner the one year reduction in his sentence which he had earned by completing a drug treatment program. (FCI La Tuna, Texas)</p>
<p>U.S. Appeals Court GOOD TIME DISCIPLINE</p>	<p><u>Sweeney v. Parke</u>, 113 F.3d 716 (7th Cir. 1997). A state prisoner filed a habeas corpus petition challenging disciplinary sanctions imposed against him, including the loss of earned time credit. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was afforded due process in connection with his disciplinary hearing and that some evidence supported the disciplinary board's decision. The court found that under Indiana law, state prison inmates have a protected liberty interest in earned good time credits. The court found that the prisoner was not entitled to more than the 24 hours he had been given to plan his defense, and that the prisoner did not request witnesses at the time he was notified of the disciplinary hearing. (Indiana State Prison)</p>
<p>U.S. District Court DUE PROCESS</p>	<p><u>Thompson v. Hawk</u>, 978 F.Supp. 1421 (D.Kan. 1997). An inmate challenged his prison disciplinary conviction for possession of a weapon by petitioning for a writ of habeas corpus. The district court denied the petition, finding that the "constructive possession" rule--under which an inmate was considered responsible for anything found in his cell absent sufficiently exculpatory evidence--satisfied the "some evidence" standard regarding a sharpened plastic kitchen utensil that was found in a light fixture in the inmate's cell. According to the court, application of the constructive possession rule was not defeated by the claim that prison officials failed to search the cell for contraband prior to assigning prisoners to the cell. The court also held that the inmate's procedural due process rights were not violated by the officials' refusal to allow the inmate discovery of evidence. The inmate had requested access to shakedown records showing when the</p>

light fixture was last searched and kitchen records indicating when the sharpened utensil was taken. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

U.S. v. Kortgaard, 26 F.Supp.2d 1239 (D.Hawai'i 1997). A prisoner moved for reconsideration of the denial of his second petition for a writ of habeas corpus, following his conviction for importing heroin. The district court held that the Antiterrorism and Effective Death Penalty Act's (AEDPA) requirement that a second habeas petition be certified by the Circuit Court did not violate the Ex Post Facto clause. (Honolulu, Hawai'i)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

U.S. v. Kunzman, 125 F.3d 1363 (10th Cir. 1997). A defendant filed a habeas motion asking for her convictions to be set aside. The district court denied the motion and the defendant appealed. The appeals court held that habeas petitioners who file their petitions in district court prior to the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), regardless of whether they file their notice of appeal before or after AEDPA, do not need a certificate of appealability to proceed with their appeal, overruling decisions in Lennox v. Evans and United States v. Riddick. (Colorado)

U.S. Appeals Court
SENTENCE
REDUCTION

Venegas v. Henman, 126 F.3d 760 (5th Cir. 1997) cert. denied 118 S.Ct. 1679. A prisoner filed for habeas corpus seeking reduction of his sentence following completion of a drug treatment program. The district court granted relief and the appeals court affirmed in part and reversed in part. The appeals court held that the Bureau of Prisons did not exceed its statutory authority to reduce sentences for nonviolent offenders who complete substance abuse treatment by excluding from the category of "nonviolent" offenders those prisoners convicted of possession of a weapon by a felon and drug possession offenses enhanced under sentencing guidelines for possession of a weapon. The court noted that the statute left to the Bureau's discretion the determination of which other offenses would be eligible for consideration. (Federal Bureau of Prisons)

U.S. Appeals Court
SEGREGATION

Wagner v. Hanks, 128 F.3d 1173 (7th Cir. 1997). A state prison inmate sought federal habeas corpus relief alleging that his placement in disciplinary segregation violated due process. The district court dismissed the action but the appeals court vacated the district court decision and remanded the case with directions. The appeals court held that the inmate's claim was to be evaluated by comparing conditions of the inmate's confinement in segregation with conditions of segregation in the state's entire prison system, not just the inmate's individual prison. (Wabash Valley Correctional Institution, Indiana)

U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act
EXHAUSTION

Williams v. Cain, 117 F.3d 863 (5th Cir. 1997). A state inmate filed a successive petition for habeas corpus and it was dismissed by the district court without prejudice pending certification by the court of appeals. The appeals court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) prior certification requirement does not apply to petitions filed in non-capital cases before AEDPA was enacted. (Louisiana)

1998

U.S. District Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act

Ashmus v. Calderon, 31 F.Supp.2d 1175 (N.D.Cal. 1998). A prisoner sentenced to death petitioned for a writ of habeas corpus after his state appeal was denied. The district court held that California did not qualify for expedited habeas review procedures under the provisions of Chapter 154 of the Antiterrorism and Effective Death Penalty Act (AEDPA). The court noted that California did not have a unitary review procedure, an adequate mechanism for offering and appointing counsel, an adequate mechanism for compensation and payment of counsel, and adequate competency standards for appointment of counsel. (California State Prison at San Quentin)

U.S. District Court
SENTENCE REDUC-
TION

Birth v. Crabtree, 996 F.Supp. 1014 (D.Or. 1998). An inmate filed a habeas petition claiming that he was improperly denied a sentence reduction by the Bureau of Prisons (BOP) following his completion of a drug and alcohol program. The district court denied the petition, finding that the BOP has the authority to promulgate program statements that deny inmates, including those with detainers lodged against them by the Immigration and Naturalization Service (INS), eligibility for drug and alcohol treatment programs if they are unable to complete the community-based phase of the treatment. The court noted that, regardless of whether they were convicted of a nonviolent offense, the BOP is not required to exempt a prisoner with an INS detainer from some of the requirements of a drug and alcohol treatment program. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
PAROLE

Blair-Bey v. Quick, 159 F.3d 591 (D.C.Cir. 1998). An inmate filed a habeas corpus petition challenging procedures for denying parole. The district court dismissed the petition. The appeals court affirmed in part and remanded the case for a hearing on the inmate's claim that the parole system, which was adopted after the inmate committed his crimes, amounted to an ex post facto law as applied to the inmate. The appeals court held that the inmate was entitled to a hearing so that he would have the opportunity to demonstrate that the parole board's discretion was totally or very substantially circumscribed in law or in fact, and yielded results materially harsher than

those that ordinarily occurred under the prior regime. (District of Columbia Bd. of Parole)

- U.S. District Court
PAROLE
- Bressette v. New York State Div. of Parole, 2 F.Supp.2d 383 (W.D.N.Y. 1998). A prison inmate challenged his conditions of release and his confinement based on violation of his conditions of parole in a habeas corpus petition. The district court denied the petition, finding that a parole officer's alleged violation of a rule requiring the office to calculate an inmate's time assessment in months did not rise to a constitutional violation. The court also held that the state parole division was within its discretion to impose parole conditions which prohibited the parolee from having contact with minors, and required him to submit to periodic drug testing and refrain from the use of alcohol. The court found that the parolee's claim that his request to be released to Florida was denied because he could not afford to pay for a bus ticket to Florida was not a proper subject for a habeas corpus review. (New York State Division of Parole)
- U.S. Appeals Court
SENTENCE REDUC-
TION
- Byrd v. Hasty, 142 F.3d 1395 (11th Cir. 1998). An inmate sought habeas corpus relief after the federal Bureau of Prisons (BOP) denied him a sentence reduction based on his completion of a drug treatment program. The district court denied relief and the inmate appealed. The appeals court reversed and remanded, finding that the BOP could not rely on the inmate's firearm sentence enhancement to deny his application for a sentence reduction. The appeals court held that the BOP exceeded its authority when it categorically excluded from eligibility those inmates who were convicted of nonviolent offenses who received sentencing enhancements for possession of a firearm. (Federal Prison Camp at Pensacola, Florida)
- U.S. Supreme Court
AEDPA-Anti-
Terrorism &
Effective Death
Penalty Act
- Calderon v. Thompson, 118 S.Ct. 1489 (1998). An offender who had been sentenced to death sought habeas corpus relief in federal court. After several district court and appellate court actions, the case was considered by the United States Supreme Court, which held that an order recalling a mandate denying habeas corpus relief did not contravene the letter of the Antiterrorism and Effective Death Penalty Act (AEDPA) which set limits on successive federal habeas corpus applications. The Court also held that the petitioner failed to show a miscarriage of justice in this case, and therefore the Court of Appeals had abused its discretion. (California)
- U.S. Appeals Court
CREDIT FOR TIME
SERVED
- Cucciniello v. Keller, 137 F.3d 721 (2nd Cir. 1998). A federal prisoner brought a habeas corpus petition seeking credit against his sentence for time spent in home confinement. The prisoner claimed he was not informed, when he accepted bail release, that his time spent in home confinement as a condition of release would not be credited against his sentence. The district court dismissed the petition and the appeals court affirmed. The appeals court held that statutes did not entitle the prisoner to credit for time spent in home confinement and that the absence of notice to the prisoner was not a due process violation. (Federal Bureau of Prisons)
- U.S. Appeals Court
GOOD TIME
- Crowell v. Walsh, 151 F.3d 1050 (D.C. Cir. 1998). An inmate petitioned for habeas corpus to challenge his denial of good time credits. The district court denied the petition and the appeals court dismissed the inmate's appeal. The appeals court held that the inmate, who had been transferred under the Interstate Corrections Compact, had no due process liberty interest in any particular level of good conduct credits. (Maximum Security Facility, District of Columbia Department of Corrections)
- U.S. District Court
DISCIPLINE
- Evans v. Deuth, 8 F.Supp.2d 1135 (N.D.Ind. 1998). A state prisoner petitioned for habeas corpus relief, which was conditionally granted by the district court. The court held that the prisoner's due process rights were violated in a disciplinary proceeding where the original charge was changed on the day of the disciplinary hearing, so that the prisoner did not have 24-hour notice of the charge on which he was convicted. The prisoner lost 180 days of earned credit time as the result of his disciplinary conviction. The state defendants had argued that the original charge of "Giving Anything of Value" and the substitute charge of extortion described the same conduct and that the defense was the same. (Pendleton Correctional Facility, Indiana)
- U.S. Appeals Court
PAROLE
- Heidelberg v. Illinois Prisoner Review Bd., 163 F.3d 1025 (7th Cir. 1998). State prisoners who were denied parole brought a habeas corpus petition. The district court dismissed the petition and the appeals court denied the prisoners' request for a certificate of appealability. According to the appeals court, Illinois' parole statute does not create a legitimate expectation of parole that would support a due process claim. The court noted that there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. (Illinois Prisoner Review Board)
- U.S. District Court
PAROLE
- Hernandez v. U.S. Parole Com'n, 1 F.Supp.2d 1262 (D.Kan. 1998). A prisoner petitioned for habeas corpus relief challenging the authority of the U.S. Parole Commission (USPC) to impose repeated terms of special parole after the revocation of his initial special parole term. The district granted the petition in part and denied the petition in part. According to the court, the USPC did not have the authority to repeatedly revoke and reimpose terms of special paroles after revocation of the initial special parole term. The court also held that the prisoner was entitled to credit for street time spent on regular parole. (United States Penitentiary, Leavenworth, Kansas)

- U.S. District Court
BAIL
- Love v. Ficano, 19 F.Supp.2d 754 (E.D.Mich. 1998). A murder defendant who was confined in a county jail pending the prosecution's appeal of a grant for a new trial, petitioned for habeas corpus relief, challenging the revocation of his bond by a state court of appeals. The district court granted relief, finding that the defendant was effectively a pretrial detainee for the purposes of entitlement to release pending appeal, and that defendant had a protected liberty interest in remaining at liberty on a bond granted by the trial court. (Wayne County Jail, Michigan)
- U.S. Appeals Court
SENTENCE
REDUCTION
- Love v. Tippy, 133 F.3d 1066 (8th Cir. 1998). An inmate who was serving sentences for conspiring to distribute cocaine and carrying a firearm during a drug trafficking offense applied for a one-year reduction of his sentence following his successful completion of a drug treatment program. The Federal Bureau of Prisons (BOP) denied the reduction, finding that the inmate's firearm conviction was not a "nonviolent offense." The inmate petitioned for a writ of habeas corpus, which was denied by the district court. The appeals court affirmed. (FCI-Waseca, Minnesota)
- U.S. District Court
PAROLE
- Lum v. Penarosa, 2 F.Supp.2d 1291 (D.Hawai'i 1998). A prisoner petitioned for habeas corpus relief, alleging he was denied parole because of his race. The district court denied the petition, finding that the prisoner failed to establish that he was subjected to racial discrimination, and that he failed to exhaust his administrative remedies. (Halawa Correctional Facility, Hawai'i)
- U.S. Appeals Court
SENTENCE
REDUCTION
- Martin v. Gerlinski, 133 F.3d 1076 (8th Cir. 1998). Federal prisoners convicted of various drug offenses petitioned for writs of habeas corpus challenging determinations by the Federal Bureau of Prisons (BOP) that they were ineligible for early release because their offenses involved possessing dangerous weapons. The district courts denied relief but the appeals court reversed and remanded with instructions. The appeals court held that the BOP's authority to define eligibility for early release was reviewable and that the Bureau's policy of considering sentencing factors in determining whether a prisoner's offense was "nonviolent" was contrary to the early release statute. The court noted that the statute referred to prisoners "convicted" of nonviolent offenses and did not address sentencing or sentence enhancement factors. (Federal Bureau of Prisons Facilities in South Dakota and Minnesota)
- U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act
DISCIPLINE
- Miller v. New Jersey State Dept. of Corrections, 145 F.3d 616 (3rd Cir. 1998). An inmate moved for an extension of time to file a petition for a writ of habeas corpus. The district court denied the motion and the inmate appealed. The appeals court granted a certificate of appealability and vacated the district court order, remanding the case. The appeals court held that the Antiterrorism and Effective Death Penalty Act's one-year limitation period for filing habeas petitions and the one year period for motions to vacate, set aside, or correct a sentence, are subject to equitable tolling, thus requiring remand. (New Jersey Dept. of Corrections)
- U.S. Appeals Court
SENTENCE
- Montano-Figueroa v. Crabtree, 162 F.3d 548 (9th Cir. 1998). A federal prisoner petitioned for a writ of habeas corpus alleging that the Inmate Financial Responsibility Program (IFRP) impermissibly intruded upon the sentencing court's responsibility to determine the amount and timing of fine payments. The district court denied the petition and the appeals court affirmed. The appeals court held that the IFRP, which allowed a prison to withhold a prisoner's wages for payment of a court-ordered fine, was not an improper intrusion upon a court's statutory sentencing authority, and that the IFRP was neither a usurpation of a sentencing court's Article III powers nor a violation of the separation of powers doctrine. (Federal Correctional Institute-Sheridan, Oregon)
- U.S. District Court
PLRA-Prison Litigation
Reform Act
- Moore v. Smith, 18 F.Supp.2d 1360 (N.D.Ga. 1998). An inmate brought a civil rights action against a corrections officer and commissioner of corrections, seeking the removal of the officer from his position and monetary damages for an alleged assault. The district court dismissed the case for failing to exhaust administrative remedies, finding that the case involved "prison conditions" and therefore exhaustion was required. The court held that under the provisions of the Prison Litigation Reform Act (PLRA), exhaustion was required where the inmate sought monetary damages, even though such damages are not available under prison grievance procedures. The inmate alleged that the officer grabbed his fan and hit him in the face and head. (Hays Correction Institution, Georgia)
- U.S. District Court
PROPERTY, PRISONER
- Mujahid v. Crabtree, 999 F.Supp. 1398 (D.Or. 1998). A prisoner brought a habeas corpus proceeding seeking to avoid sanctions for refusing to participate in a voluntary payment program for fines and debts. The district court denied the petition, finding that the requirements for monthly payments under the program did not conflict with the terms governing payment of the fine contained in the prisoners judgment of conviction. The court also held that the federal Bureau of Prison's promulgation of regulations governing fine and debt repayment did not constitute usurpation of judicial authority. The amount required under the Bureau's Inmate Financial Responsibility Program (IFRP) was less than the sum required under his sentence and the court did not establish a timetable for payment. (FCI Sheridan, Oregon)

- U.S. Appeals Court
AEDPA-Anti-Terrorism & Effective Death Penalty Act
- Neelley v. Nagle, 138 F.3d 917 (11th Cir. 1998). An offender sought habeas corpus relief after his capital murder conviction was affirmed by a state supreme court. The district court held that the Antiterrorism and Effective Death Penalty Act (AEDPA), which established new standards for the review of state court decisions, applied to cases pending at the time of its effective date without violating the ex post facto clause. (Alabama)
- U.S. District Court
AEDPA-Antiterrorism & Effective Death Penalty Act
- Oken v. Nuth, 30 F.Supp.2d 877 (D.Md. 1998). A death row inmate petitioning for a writ of habeas corpus asked the district court to declare that Maryland was not an "opt in" state under the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA) which allowed shortened periods of review. The district court granted declaratory relief, finding that the state had not satisfied the requirements of AEDPA. (Maryland Correctional Adjustment Center and Maryland Penitentiary)
- U.S. District Court
AEDPA-Antiterrorism & Effective Death Penalty Act
DEPORTATION
- Pak v. Reno, 8 F.Supp.2d 1001 (N.D.Ohio 1998). A permanent resident alien who had been convicted of criminal drug offenses filed a petition for habeas corpus relief from his threatened deportation to South Korea. The district court granted the petition to the extent that it referred the matter to the Board of Immigration Appeals for further proceedings. The court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Immigrant Reform and Immigrant Responsibility Act did not repeal the district court's general powers of habeas corpus jurisdiction so as to preclude review of a final deportation order of a criminal alien. (Federal Bureau of Prisons)
- U.S. Appeals Court
SENTENCE REDUCTION
- Parsons v. Pitzer, 149 F.3d 734 (7th Cir. 1998). A federal inmate petitioned for a writ of habeas corpus challenging a federal Bureau of Prisons (BOP) determination that he was not eligible for early release after he completed a drug treatment program. The district court denied the petition and the appeals court affirmed. The appeals court held that possession of a firearm by a convicted felon was a "crime of violence" that rendered the inmate ineligible for early release. (Federal Correctional Institute, Oxford, Wisconsin)
- U.S. Appeals Court
GOOD TIME
- Patterson v. Knowles, 162 F.3d 574 (10th Cir. 1998). A federal inmate petitioned for a writ of habeas corpus, claiming he was entitled to have good time credits earned prior to his parole credited against the term of incarceration that was imposed after revocation of his parole. The district court dismissed the petition and the appeals court affirmed. The appeals court held that the inmate was not entitled to a reduction in his parole violator term based upon good time he accumulated prior to release on parole. (United States Parole Commission)
- U.S. District Court
PAROLE
- Phillips v. True, 992 F.Supp. 1255 (D.Kan. 1998). An offender sought habeas relief following the revocation of his parole. The district court held that a parole commission's decision revoking the offender's parole, based on an alleged incident where the offender fired a handgun during an argument with his brother and sister-in-law causing serious injury to his niece, was supported by reasonable grounds, despite the fact that the offender was acquitted on charges related to the incident. The court noted that revocation of parole may be based upon reasonable grounds, a considerably lower threshold than the standard of proof which is applied in criminal proceedings. (Kansas Parole Commission)
- U.S. District Court
EXHAUSTION
STATUTE OF
LIMITATIONS
AEDPA-Anti-Terrorism & Effective Death Penalty Act
- Rashid v. Khulmann, 991 F.Supp. 254 (S.D.N.Y. 1998). A prisoner petitioned for habeas relief. The district court found that filing a habeas petition within 359 days after the effective date of the Antiterrorism and Effective Death Penalty Act (AEDPA), and over ten years after the petitioner exhausted his state remedies, was "unreasonable." The court held that the AEDPA provision that requires habeas petitions to be filed no later than one year after the completion of state court review did not violate the Ex Post Facto Clause, finding that the imposition of a statute of limitations did not disadvantage the petitioner because it still left him a reasonable time in which to file his petition. (Sullivan Correctional Facility, New York)
- U.S. Appeals Court
PAROLE
- Robles v. U.S., 146 F.3d 1098 (9th Cir. 1998). An inmate petitioned for a writ of habeas corpus, challenging the authority of the U.S. Parole Commission to impose a second term of special parole after it revoked the original special parole. The district court denied the petition, but the appeals court reversed and remanded with instructions. The appeals court held that the Parole Commission is not authorized to impose a second term of special parole, but is confined to the imposition of ordinary parole. (U.S. Parole Commission)
- U.S. District Court
MILITARY
PAROLE
EX POST FACTO
- Romey v. Vanyur, 9 F.Supp.2d 565 (E.D.N.C. 1998). A defendant who was convicted by an Army general court-martial of indecent assault and sodomy with a child under 16 years of age was denied parole and petitioned for a writ of habeas corpus. The defendant was initially confined in a military prison but had been transferred to a federal facility. The district court dismissed the petition, finding that the military courts provided the defendant with a full and fair hearing and that the Parole Commission complied with statutory disclosure requirements by providing the defendant with a summary of a psychiatric report and its conclusions. The court held that the defendant was subject to federal Bureau of Prisons rules on the frequency of parole hearings and that the application of Bureau rules was not an ex post facto punishment. (LSCI-Butner, North Carolina)

- U.S. Appeals Court
SENTENCE REDUC-
TION
- Royal v. Tombone, 141 F.3d 596 (5th Cir. 1998). An inmate petitioned for habeas corpus relief when he was found to be ineligible for a sentence reduction following his completion of a drug abuse treatment program. The district court denied the petition and the appeals court affirmed. The appeals court held that the federal Bureau of Prison's program statement, that considered bank robbery as a crime of violence, was a permissible interpretation of a federal statute that authorized sentence reductions. (Federal Correctional Institution, Seagoville, Texas)
- U.S. Appeals Court
RELEASE
NOTIFICATION
- Royce v. Hahn, 151 F.3d 116 (3rd Cir. 1998). A prisoner who had been convicted of possession of a firearm by a felon challenged the determination that he had committed a crime of violence, so as to require federal prison authorities to notify local authorities upon his release. The district court dismissed the prisoner's habeas petition but the appeals court reversed and remanded. The appeals court held that possession of a firearm by a felon is not a crime of violence within the scope of the federal statute requiring prison officials to notify local authorities. (Federal Correctional Institution, McKean, Pennsylvania)
- U.S. District Court
MILITARY
SENTENCE
- Seaver v. Commandant, U.S. Disciplinary Barracks, 998 F.Supp. 1215 (D.Kan. 1998). A military prisoner who was convicted of multiple counts of sodomy and indecent liberties with a child filed an application for a writ of habeas corpus. The district court dismissed the action, finding that the prisoner's commitment for 18 years was well within statutory limits and did not contravene the Eighth Amendment prohibition against cruel and unusual punishment. The court also found that the dismissal of the prisoner from the Navy, which resulted in his loss of retirement pay and benefits, did not serve as the basis for an Eighth Amendment claim. According to the court, it had no jurisdiction to review a service Secretary's decisions as to retirement under the habeas corpus statute. (United States Disciplinary Barracks, Leavenworth, Kansas)
- U.S. District Court
DISCIPLINE
- Sizemore v. Lee, 20 F.Supp.2d 956 (W.D.Va. 1998). A habeas corpus action was brought by a prisoner who was disciplined for helping other inmates prepare legal pleadings after he had been ordered by corrections officials to stop. The district court dismissed the petition, finding that it was constitutional for the officials to order the prisoner to cease and desist writ writing activities on behalf of other inmates. The court noted that ordering one inmate to stop assisting others did not necessarily violate the other inmates' right of access to court because they could seek assistance from others, including counselors or family members. (Marion Correctional Treatment Center, Virginia)
- U.S. District Court
INTERSTATE
COMPACT
- Smart v. Goord, 21 F.Supp.2d 309 (S.D.N.Y. 1998). A defendant who was convicted in New Hampshire for conspiring to murder her husband, and was then transferred to a New York State prison, filed a habeas corpus petition in New York. New York officials moved to dismiss the petition, or to transfer it to New Hampshire. The district court granted the motion to transfer, finding that New Hampshire was the true custodian, and therefore a district court in New Hampshire would be able to assert personal jurisdiction over appropriate New Hampshire officials. (New York Department of Correctional Services, New Hampshire Department of Corrections)
- U.S. District Court
JUVENILE
- Smith v. Sullivan, 1 F.Supp.2d 206 (W.D.N.Y. 1998). A juvenile petitioned for habeas corpus relief after he was convicted of second-degree murder. The district court dismissed the petition, finding that trying the 13-year-old juvenile as an adult did not violate due process, absent evidence of mitigating circumstances that could have warranted removing the case to family court. (Brookwood Secure Center, New York)
- U.S. Supreme Court
PAROLE
- Spencer v. Kemna, 118 S.Ct. 978 (1998). An inmate filed a habeas corpus petition challenging allegedly unconstitutional parole revocation procedures. The district court dismissed the petition as moot after the inmate's sentences had expired. The appeals court affirmed. The United States Supreme Court held that the inmate's release from prison after his habeas petition had already been filed did not cause the petition to become moot on the theory that it no longer satisfied the "in custody" requirement of the federal habeas statute. According to the court, the in-custody requirement was satisfied as long as the petitioner was incarcerated at the time the petition was filed. However, the court ruled that it would not extend its previous presumption that criminal convictions have collateral consequences to revocations of parole, nor were the collateral consequences asserted by the petitioner concrete injuries-in-fact of the kind sufficient to satisfy Article III's case-or-controversy requirement. The court affirmed the appeals court decision. (Western Missouri Correctional Center)
- U.S. Appeals Court
AEDPA-Antiterrorism
& Effective Death
Penalty Act
- Spotville v. Cain, 149 F.3d 374 (5th Cir. 1998). A prisoner filed a habeas corpus petition challenging his conviction of a capital crime, which was dismissed by the district court for failure to comply with the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). The appeals court reversed and remanded, finding that the petition was "filed" for the purposes of determining application of AEDPA when the prisoner tendered the petition to prison officials for mailing, not upon payment of the filing fee that was subsequently required when the prisoner's in forma pauperis status was denied. (Louisiana State Penitentiary, Angola, Louisiana)

- U.S. Supreme Court
AEDPA-Anti-Terrorism & Effective Death Penalty Act
- Stewart v. Martinez-Villareal, 118 S.Ct. 1618 (1998). A habeas corpus petitioner under sentence of death moved to reopen his first habeas proceeding for consideration of his claim that he was not competent to be executed. The petition was originally dismissed without prejudice as premature. The district court held that under the Antiterrorism and Effective Death Penalty Act (AEDPA) it lacked jurisdiction to consider the claim. The Supreme Court held that the petitioner's claim was not a "second or successive" application under AEDPA and that he was entitled to hearing in district court. (Arizona Department of Correction)
- U.S. Appeals Court
PAROLE
PRETRIAL DETAINEE
- Stringer v. Williams, 161 F.3d 259 (5th Cir. 1998). A state prisoner sought federal habeas corpus relief from state prosecution on offenses he allegedly committed while on parole. The district court dismissed the petition and the appeals court dismissed the prisoner's appeal. The appeals court held that the prisoner was required to obtain a certificate of appealability following the district court's denial of his petition, assuming that the prisoner was proceeding as a pretrial detainee to prevent prosecution on criminal charges. The appeals court also found that double jeopardy did not bar prosecution for offenses that had served as the basis for revoking the prisoner's parole. (Tarrant County Sheriff, Texas)
- U.S. Appeals Court
DISCIPLINE
SEGREGATION
- Sylvester v. Hanks, 140 F.3d 713 (7th Cir. 1998). A prisoner petitioned for habeas corpus relief, challenging a prison conduct board's decision that found he had conspired to incite a riot and which ordered him to spend three years in disciplinary segregation. The district court denied the petition and the appeals court affirmed. The court found that "some evidence" supported the finding that the prisoner had been involved with the riot, and that due process did not require the prison to compel unwilling witnesses to give testimony at hearings that concerned only the prisoner's custody status, not his length of confinement. (Indiana)
- U.S. District Court
ALIEN
MARRIAGE
- Theck v. Warden, I.N.S., 22 F.Supp.2d 1117 (C.D.Cal. 1998). An excludable alien, who had no country to which to be deported, petitioned for habeas corpus relief, challenging the constitutionality of his ongoing, potentially indefinite, detention. The district court held that the alien had a constitutional right to marry and that the refusal of the Immigration and Naturalization Service (INS) to allow the alien to marry a Spanish citizen would give rise to a Fourth Amendment violation. The court noted that while the alien had no right to be admitted to the United States, the justification for prolonged detention presumes a lack of alternatives and when a viable alternative presents itself, continued detention may become unreasonable. The alien had attempted to enter the United States at John F. Kennedy International Airport using a fraudulent Canadian passport. (Immigration and Naturalization Service)
- U.S. District Court
DISCIPLINE
- Thomas v. McBride, 3 F.Supp.2d 989 (N.D.Ind. 1998). A state prison inmate petitioned for habeas corpus relief challenging the loss of his good time credits at a disciplinary hearing. The district court denied the petition, finding that a valid chain of custody for a urine sample was established so as to satisfy due process. The court found that the inmate's claims that prison officials did not follow a state Department of Corrections executive directive on how an inmate urine sample is to be collected was not cognizable in habeas corpus. According to the court, a laboratory report which listed several drug classes, each of which was marked "negative" except for cannabinoids (THC) which was marked "positive," was constitutionally sufficient for the purpose of reporting test results used in a prison disciplinary action. (Westville Correctional Facility, Indiana)
- U.S. District Court
CLASSIFICATION
- U.S. v. Harmon, 999 F.Supp. 467 (W.D.N.Y. 1998). An offender brought a habeas corpus petition following his conviction. The district court denied the petition and held that it would not direct the federal Bureau of Prisons to lower the offender's custody classification level. The court found that there was no allegation that his custody classification was unlawful and there was no evidence that the defendant had sought prior administrative relief. (Federal Bureau of Prisons)
- U.S. District Court
PAROLE
- Valona v. U.S. Parole Com'n, 165 F.3d 508 (7th Cir. 1998). An offender who had been released in 1992 petitioned for a writ of habeas corpus seeking termination of his parole supervision. The petition was dismissed by the district court on first appeal. The dismissal was reversed but was again dismissed by the district court for failure to exhaust administrative remedies. On second appeal the appeals court vacated and remanded, finding that the "necessary and appropriate" step to preserve the parolee's rights pending further proceedings was the cessation of parole supervision, based on the Parole Commission's failure to hold a hearing and make necessary findings within five years of the parolee's release from prison. (United States Parole Commission)
- U.S. Appeals Court
PAROLE
- Wildermuth v. Furlong, 147 F.3d 1234 (10th Cir. 1998). A state prisoner who was denied parole on several occasions petitioned for habeas corpus relief. The district court denied the petition and the appeals court affirmed. The appeals court held that the even if the denial of parole based on the prisoner's refusal to participate in a sex offender treatment program was improper, the denial was not an abuse of discretion because there were other valid reasons for denying the prisoner parole, including the prisoner's lack of remorse, his inconsistent stories, and his violent tendencies when drunk. The parole board had required the prisoner to

complete a sex offender treatment program before becoming eligible for parole, but the prisoner asserted that he did not need the program because his crime was not sexual in nature. (Colorado Department of Parole)

- U.S. District Court
TRANSFER
FOREIGN COUNTRY
- Wong v. Warden, FCI Raybrook, 999 F.Supp. 287 (N.D.N.Y. 1998). An alien prisoner of Chinese ancestry who was serving sentences for conspiracy to distribute heroin filed a habeas corpus petition claiming that the U.S. Department of Justice denied his request for a transfer to his country of citizenship (Canada) based on his race, or in retaliation for refusing to cooperate with law enforcement. The district court concluded that the Administrative Procedure Act did not preclude judicial review of the Justice Department's decision to deny an alien prisoner's request for transfer, but the petition was denied. The court found that statistical evidence concerning disposition of transfer requests did not give rise to an inference of discrimination based on Oriental race and/or national origin area. (Federal Correctional Institution, Ray Brook, New York)
- U.S. Appeals Court
SENTENCE
REDUCTION
HABEAS CORPUS
RELIEF
- Wottlin v. Fleming, 136 F.3d 1032 (5th Cir. 1998). An inmate who had completed a substance abuse program petitioned for habeas relief, challenging Federal Bureau of Prisons (BOP) regulations making him ineligible for early release. The district court dismissed the petition, the inmate appealed, and the appeals court affirmed. The appeals court held that the BOP regulation that excludes inmates who have a prior conviction for homicide, forcible rape, robbery, or aggravated assault from eligibility for early release following completion of a substance abuse treatment program was a reasonable interpretation of the Violent Crime Control and Enforcement Act of 1994. The court noted that the BOP Program Statement regarding substance abuse treatment programs did not mandate early release and inmates who completed the program did not have a due-process liberty interest in early release. (Federal Correctional Institution, Bastrop, Texas)
- 1999
- U.S. District Court
SENTENCE
- Alevras v. Snyder, 49 F.Supp.2d 1112 (E.D.Ark. 1999). A prisoner petitioned for habeas corpus relief challenging the legality of the federal Bureau of Prisons (BOP) Inmate Financial Responsibility Program (IFRP). The district court held that IFRP did not violate a statutory subsection governing the time and method of payment of fines or Article III. The court noted that the sentencing court ordered restitution to be paid in installments, which allowed the prison to withhold wages to pay court-ordered restitution. The district court reviewed conflicting appeals court decisions regarding this issue and concluded that requiring participation in IFRP was appropriate. (Federal Correctional Institution in Forrest City, Arkansas)
- U.S. District Court
ALIEN
- Alikhani v. Fasano, 70 F.Supp.2d 1124 (S.D.Cal. 1999). An alien filed a petition for a writ of habeas corpus challenging the constitutionality of his detention prior to deportation. The district court denied the petition, finding that the mandatory provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied to the alien and did not violate his constitutional rights. (Immigration and Naturalization Service, California)
- U.S. Appeals Court
ALIEN
AEDPA- Antiterrorism &
Effective Death Penalty
Act
- Almon v. Reno, 192 F.3d 28 (1st Cir. 1999). An alien brought a habeas corpus action seeking relief from a deportation order and arguing that the Antiterrorism and Effective Death Penalty Act (AEDPA) violated his equal protection rights by allowing discretionary waivers of deportation for aliens in exclusion proceedings but not for aliens in deportation proceedings. The district court granted the petition but the appeals court reversed. The appeals court held that Congress had a rational basis for authorizing such disparate treatment in that it sought to expedite deportation of aliens currently residing in the United States. (United States District Court, Massachusetts)
- U.S. Appeals Court
SENTENCE
REDUCTION
- Bellis v. Davis, 186 F.3d 1092 (8th Cir. 1999). Ten federal prisoners petitioned for writs of habeas corpus, challenging the policy of the Bureau of Prisons (BOP) under which they were ineligible for an early-release incentive by voluntary participation in resident drug abuse treatment programs. The district court granted the petitions, but the appeals court reversed and remanded. The appeals court held that the BOP acted within its authority by adopting regulations under which inmates who were convicted of being a felon in possession of a firearm, or had received an enhancement under Sentencing Guidelines for possession of a dangerous weapon during the commission of a federal drug offense, were ineligible for the early-release incentive. (Federal Prison Camp, Yankton, South Dakota)
- U.S. Appeals Court
AEDPA-Anti-Terrorism
and Effective Death
Penalty Act
ALIEN
- Bowrin v. U.S. I.N.S., 194 F.3d 483 (4th Cir. 1999). A permanent resident alien appealed the determination of the Board of Immigration Appeals (BIA) that he was ineligible for discretionary relief from deportation because he had committed a criminal offense that was listed in the Anti-Terrorism and Effective Death Penalty Act (AEDPA). The alien also filed a habeas corpus petition challenging the BIA's decision. The district court dismissed the case and the appeals court reversed the dismissal of the habeas petition and remanded the case. The appeals court held that AEDPA and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) do not preclude federal court review of habeas corpus petitions raising questions of pure law for immigrants imprisoned under a final order of deportation. (County of Prince Georges, Maryland)

<p>U.S. District Court ALIENS AEDPA-Anti-Terrorism and Effective Death Penalty Act</p>	<p><u>Ceballos de Leon v. Reno</u>, 58 F.Supp.2d 463 (D.N.J. 1999). An alien petitioned for habeas corpus relief and a preliminary injunction prohibiting his deportation. The district court denied the petition, finding that the statute that precluded discretionary relief for deportable aliens convicted of drug offenses but not excludable aliens did not violate equal protection. (Immigration and Naturalization Service, Newark, New Jersey)</p>
<p>U.S. Appeals Court AEDPA- Antiterrorism & Effective Death Penalty Act ALIEN</p>	<p><u>Chow v. Reno</u>, 193 F.3d 892 (7th Cir. 1999). An alien who had been found deportable based on convictions for controlled substance and firearms violations filed a petition for a writ of habeas corpus. The district court granted the petition but the appeals court reversed and remanded. The appeals court held that the section of the Antiterrorism and Effective Death Penalty Act (AEDPA) that bars waivers of deportation for aliens convicted of certain drug-related offenses does not violate equal protection. (Immigration and Naturalization Service, Illinois)</p>
<p>U.S. District Court SEX OFFENDER</p>	<p><u>Del Carmen Molina v. I.N.S.</u>, 170 F.3d 1247 (9th Cir. 1999). A habeas corpus petition was dismissed by a federal district court and the petitioner appealed. The appeals court affirmed, finding that Oregon's sex offender registration statute does not place an offender in "custody" for the purposes of a federal habeas corpus petition. The court noted that under the statute, offenders who are subject to registration are free to move to a new place of residence as long as they notify law enforcement officials of their new address. (State of Oregon)</p>
<p>U.S. District Court ALIEN</p>	<p><u>Dominguez-Estrella v. U.S. I.N.S.</u>, 71 F.Supp.2d 578 (W.D.La. 1999). A detained resident alien subject to final deportation petitioned for habeas corpus relief alleging that he was subjected to indefinite detention in violation of his right to substantive due process. The district court held that the statute that authorizes the continued detention of certain criminal aliens subject to deportation beyond the 90 day removal period was not unconstitutional. (Calcasieu Sheriff's Prison, Louisiana)</p>
<p>U.S. Appeals Court FEDERAL COURTS JURISDICTION</p>	<p><u>Dry v. CFR Court of Indian Offenses</u>, 168 F.3d 1207 (10th Cir. 1999). The plaintiffs had been charged with various violations, arraigned and released on their own recognizance by the Court of Indian Offenses for the Choctaw Nation. They sought habeas relief, challenging the court's jurisdiction. The district court dismissed the petition, but the appeals court reversed and remanded, finding that the plaintiffs were "in custody" as required for the federal court to have jurisdiction over their habeas petition. According to the court, a person is "in custody" if he or she is subject to severe restraints on his or her individual liberty, and restraint is considered "severe" when it is not shared by the public generally. The appeals court ordered the district court to consider first, on remand, whether the plaintiffs have sufficiently exhausted their tribal remedies. (Choctaw Nation, Oklahoma)</p>
<p>U.S. District Court DISCIPLINE DUE PROCESS TRANSFER RELEASE DATE</p>	<p><u>Frazier v. Hesson</u>, 40 F.Supp.2d 957 (W.D.Tenn. 1999). An inmate challenged prison discipline practices in a habeas corpus petition. The district court dismissed the petition, finding that the inmate's due process rights were not violated when he was accused of a disciplinary offense while confined in involuntary administrative segregation and transferred to a maximum security prison. The court held that reclassification and transfer to a maximum security facility and confinement in administrative segregation did not deprive the inmate of any due process liberty interests, even if the assignment to administrative segregation affected his ability to earn sentencing credits. The court noted that a state law that requires a due process hearing prior to extensions in an inmate's release eligibility date was merely a state law procedural requirement and did not create a liberty interest protected by the Due Process clause. (West Tennessee State Prison)</p>
<p>U.S. District Court RELEASE DATE PAROLE</p>	<p><u>Goldberg v. Beeler</u>, 82 F.Supp.2d 302 (D.N.J. 1999). A prisoner filed a habeas corpus petition challenging the calculation of his minimum length of sentence. The district court denied the petition finding that even if the prisoner's pre-sentence report contained inaccuracies, the Parole Commission is required to consider the report when making parole determinations. (Federal Correctional Institution, Fort Dix, New Jersey)</p>
<p>U.S. District Court AEDPA-Antiterrorism & Effective Death Penalty Act ALIEN</p>	<p><u>Gutierrez-Perez v. Fasano</u>, 37 F.Supp.2d 1166 (S.D.Cal. 1999). A permanent resident alien who was found deportable because of a state court drug conviction petitioned for habeas corpus relief, challenging an immigration court's denial of his application for discretionary relief from deportation. The district court granted the petition, finding that a provision of the Antiterrorism and Effective Death Penalty Act (AEDPA) which rendered deportable aliens, but not excludable aliens convicted of certain offenses, ineligible for discretionary relief violated the Equal Protection clause. The court held that the alien was entitled to a hearing before the Board of Immigration Appeals on his motion for discretionary relief. (Immigration and Naturalization Service, California)</p>
<p>U.S. District Court ALIEN</p>	<p><u>Hermanowski v. Farquharson</u>, 39 F.Supp.2d 148 (D.R.I. 1999). An alien petitioned for habeas corpus relief challenging his continued detention pending execution of his deportation order. The district court granted the petition, finding that the alien's continued indefinite detention violated his right to substantive due process. The court ruled that the alien was entitled to be conditionally released. The alien had been detained for more than 28 months while the U.S. government unsuccessfully sought to secure travel authorization from the Polish government, which had notified the U.S. government that it would not allow the alien's deportation. Since the</p>

alien's convictions in the United States were "in the league of purse-snatching and low-level narcotics violations" the court concluded that the alien did not pose a danger to the community. (District Office, Immigration and Naturalization Service, Rhode Island)

U.S. District Court
PAROLE

Jennings v. Parole Bd. of Virginia, 61 F.Supp.2d 471 (E.D.Va. 1999). An inmate who was denied parole petitioned for habeas corpus relief. The district court dismissed the petition finding that the parole board's failure to formally provide the inmate with its criteria before his parole reviews constituted harmless error. (Parole Board of Virginia)

U.S. District Court
ALIEN

Kiareldeen v. Reno, 71 F.Supp.2d 402 (D.N.J. 1999). An alien petitioned for habeas corpus relief, challenging the constitutionality of his detention pending the resolution of his removal proceedings. The district court granted the petition, finding that the use of secret evidence at the alien's bond hearing and throughout his removal proceedings violated his right to due process. The court also found that the Board of Immigration Appeals decision to detain the alien without the right to bond, primarily on the basis of an uncorroborated hearsay document, violated the alien's right to due process. (Hudson County Correctional Center, New Jersey)

U.S. District Court
TRANSFER

Lambert v. Sullivan, 35 F.Supp.2d 1131 (E.D.Wis. 1999). A state prisoner filed for a writ of habeas corpus in an attempt to prevent his transfer to a privately-operated correctional facility in another state. The district court denied the petition, finding that the proposed transfer did not violate the prisoner's rights under state law nor did it violate the prisoner's due process rights. The court noted that as a general matter, a state prisoner has no federal constitutional right to serve his sentence in any particular place of confinement. The court also rejected the prisoner's assertion that his transfer would violate the Thirteenth Amendment's proscription against involuntary servitude because he would be required to work at the private facility. According to the court, it is well established that the forced labor of state convicts does not violate the Thirteenth Amendment, and the same rule of law applies regardless of whether the convict is incarcerated in a public or private facility. (Fox Lake Correctional Institution, Wisconsin)

U.S. District Court
PAROLE

Lee v. Withrow, 76 F.Supp.2d 789 (E.D.Mich. 1999). A state prisoner challenged his denial of parole with a habeas corpus petition alleging violations of his due process rights. The district court denied the petition, finding that the denial of parole, with the consequence that the prisoner served a sentence beyond his minimum sentence, was not a violation of his constitutional rights. According to the court Michigan's parole statute did not create a protectable expectation of parole and was not void for vagueness for failure to define the terms "reasonable assurance," "menace to society or the public safety," or "satisfactory evidence" of gainful employment. (Michigan Reformatory, Ionia)

U.S. Appeals Court
GOOD TIME
PRETRIAL DETAINEE

MacFarlane v. Walter, 179 F.3d 1131 (9th Cir. 1999). After their state habeas petitions were denied, state prisoners petitioned for federal habeas corpus relief, challenging two counties' "good conduct" and "good performance" policies as they were applied to them. The district court granted summary judgment for the respondent corrections officials, but the appeals court reversed and remanded. The appeals court held that there was an equal protection violation in the counties' allowance of lesser good time credits for defendants who were detained pretrial in county jails because of their financial inability to post bail, than that allowed for defendants who were able to wait to serve their sentences until after sentencing to a state correctional facility. The counties' early release policies limited presentence detainees to a maximum good-conduct credit of 15% of the sentence imposed; the court noted that persons who had posted bail and served their entire sentence at a state correctional facility could end up serving 23 days less on a five- to six-year sentence. The court upheld the policies under which pretrial detainees were not eligible for participation in work and other programs through which they could earn good-performance credit, finding the counties had established a strong rational connection between the legislative means and purpose of protecting community safety. (Pierce and Clark County Jails, Washington)

U.S. Appeals Court
PAROLE

Manso v. Federal Detention Center, 182 F.3d 814 (11th Cir. 1999). A prisoner petitioned for a writ of habeas corpus challenging his term of special parole. The district court denied relief and the appeals court affirmed. The appeals court held that the Parole Commission exceeded its authority in assigning the prisoner a new term of special parole after the original term had been revoked, noting that special parole is extinguished once it is revoked for the first time. (Federal Detention Center, Miami, Florida)

U.S. District Court
RELEASE DATE
ALIEN

McLean v. Crabtree, 173 F.3d 1176 (9th Cir. 1999). Federal prisoners filed petitions for habeas corpus challenging the federal Bureau of Prisons denial of their requests for early release. The district court denied the petitions and the appeals court affirmed. The court upheld the Bureau's rule that excluded prisoners with detainers from sentence reduction eligibility under a substance abuse treatment statute, and the Bureau's conditioning of sentence reduction on the completion of a community-based treatment program. The appeals court found that the Bureau's detainer policy did not violate equal protection by allegedly operating to the peculiar disadvantage of aliens. (Federal Correctional Institute, Sheridan, Oregon)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

McPherson v. McBride, 188 F.3d 784 (7th Cir. 1999). An inmate petitioned for habeas corpus relief after he was unable to secure administrative relief from a prison disciplinary board's finding that he was guilty of violating a rule forbidding sexual acts between inmates. The district court granted the petition but the appeals court reversed the decision. The appeals

court held that the prison disciplinary board's finding of guilt was supported by "some evidence" including an officer's incident report that provided sufficient detail and the testimony of another officer who was present at the time. The disciplinary panel had revoked 90 days of earned good time. (Westville Correctional Center, Indiana)

U.S. Appeals Court
PAROLE
SENTENCE

Noble v. U.S. Parole Com'n, 194 F.3d 152 (D.C.Cir. 1999). A prisoner sought a writ of habeas corpus claiming that he was entitled to credit for time spent on parole after his parole was revoked. The district court denied the writ and the appeals court affirmed. The appeals court held that the United States Parole Commission did not violate the prisoner's rights by refusing to credit the prisoner for time spent on parole. (District of Columbia)

U.S. Supreme Court
DEATH PENALTY
EXHAUSTION

O'Sullivan v. Boerckel, 119 S.Ct. 1728 (1999). After his state convictions for rape, burglary and aggravated battery were affirmed, a state prisoner petitioned for federal habeas corpus relief. The district court denied the petition but the appeals court reversed and remanded. The United States Supreme Court reversed the appeals court decision, finding that in order to satisfy the exhaustion requirement, the prisoner was required to present his claims to a state supreme court for discretionary review. (Illinois)

U.S. District Court
SENTENCE

Phillips v. Booker, 76 F.Supp.2d 1183 (D.Kan. 1999). A prisoner filed a habeas corpus petition challenging the execution of his sentence because the Bureau of Prisons had delegated payments of court-ordered restitution through the Inmate Financial Responsibility Program (IFRP). The court denied the petition, finding that even though restitution was ordered to be paid immediately by the court it did not become void because it could not be paid in full immediately. The court found that the federal prisoner did not possess a liberty or property interest in his Federal Prison Industries job assignment and therefore he could be presented with the choice of assigning one-half of his pay to satisfy his restitution obligation or losing his job, without any violation of his due process rights. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
TRANSFER

Pischke v. Litscher, 178 F.3d 497 (7th Cir. 1999). Inmates of several Wisconsin state prisons sought habeas corpus relief to invalidate, under the Thirteenth Amendment's ban on involuntary servitude, a state statute that authorizes prison authorities to enter into contracts with private prisons in other states for the confinement of Wisconsin prisoners. Federal district courts denied the inmates' petitions. The appeals court denied the applications for appealability, finding that § 1983, not habeas corpus, was the proper means to challenge the constitutionality of the statute, and that the claims were frivolous. According to the court, the Thirteenth Amendment ban on involuntary servitude has an express exception for persons imprisoned pursuant to conviction of a crime. (Wisconsin)

U.S. District Court
GOOD TIME

Resnick v. Adams, 37 F.Supp.2d 1154 (C.D.Cal. 1999). A presentence detainee filed a habeas corpus petition alleging that 27 days of good time credit were unlawfully taken from him as a sanction for violating a prison regulation. He petitioned to have the 27 days restored. The district court dismissed the petition, finding that denial of good time credit as a sanction for violating a prison regulation during a detainee's presentence incarceration was not prohibited, if the sanction is not excessive in light of the seriousness of the violation. While detained in a federal detention center a routine drug screening had detected morphine in the detainee's urine. (Federal Detention Center at Dublin, California, and United States Penitentiary at Lompoc, California)

U.S. District Court
HABEAS CORPUS
RELIEF

Rhoden v. Rowland, 172 F.3d 633 (9th Cir. 1999). A federal prisoner challenged his conviction on the grounds that the court should not have shackled him in view of the jury. The state appeals court affirmed his conviction and the federal district court denied relief. The federal appeals court reversed and remanded, finding that the offender's due process rights were violated because the jury saw the shackles, the case involved violent crimes, and the evidence was disputed. The appeals court had previously remanded the case to the district court which concluded that the shackles were visible to the jury but that the actual prejudicial effect on jury deliberations was insufficient to warrant habeas relief. The appeals court again remanded the case, instructing the district court to grant the habeas petition. (California)

U.S. District Court
TRANSFER

Rizvi v. Crabtree, 42 F.Supp.2d 1024 (D.Or. 1999). An inmate who had been placed in administrative segregation, transferred and barred from communicating with his son who was another inmate, for allegedly planning an escape, petitioned for habeas corpus relief. The district court granted the petition, finding that the inmate had been denied procedural due process. According to the court, the inmate should have been given advance written notice of alleged violations, a written statement of fact finders as to evidence relied on and reasons for disciplinary action, and the opportunity to call witnesses and present documentary evidence in his defense. The inmate and his son had been placed in administrative segregation along with three other men after an informant told prison staff that they were planning an escape. The group was then transferred to a local county jail where they remained in administrative segregation for two more months, and then were transferred to different federal institutions. (Federal Bureau of Prisons, FCI Safford, Arizona)

U.S. Appeals Court
ALIENS

Rodriguez v. Reno, 164 F.3d 575 (11th Cir. 1999). An alien filed a habeas corpus petition challenging the denial of his motion to reopen his deportation proceedings. The district court dismissed the petition, and the appeals court affirmed, vacating the stay of

deportation. The appeals court held that the Immigration and Nationality Act (INA) deprived the district court of jurisdiction over the petition and such deprivation was not unconstitutional as applied to the alien. (Florida)

U.S. District Court
ALIEN

Rogowski v. Reno, 94 F.Supp.2d 177 (D.Conn. 1999). A permanent resident alien sought a writ of habeas corpus claiming he was illegally detained by the Immigration and Naturalization Service (INS). The district court granted the summary judgment in favor of the alien, finding that mandatory detention pending deportation violated the alien's substantive due process rights. (Immigration and Naturalization Service, Minnesota)

U.S. District Court
ALIEN

Sok v. I.N.S., 67 F.Supp.2d 1166 (E.D.Cal. 1999). An alien filed an application for a writ of habeas corpus claiming that his continued detention violated his due process rights. The district court granted the petition, finding that continued detention beyond the removal period violated a federal statute because there was not a reasonable possibility of the alien's removal in the foreseeable future, due to the lack of an agreement to cover deportation between the alien's home country and the United States. (Immigration and Naturalization Service, California)

U.S. District Court
CONDITIONS OF
CONFINEMENT
TRANSFER

Posey v. Dewalt, 86 F.Supp.2d 565 (E.D.Va. 1999). A federal inmate petitioned for habeas corpus relief challenging a federal Bureau of Prisons decision to deny him minimum custody status based on a state detainer that had been filed against him. The district court dismissed the petition, finding that the inmate was not entitled to a prompt hearing on his alleged state parole violation, and the Bureau's consideration of his state detainer did not implicate a protected liberty interest under the due process clause. The court noted that the inmate did not have a protected liberty interest in a particular classification or in being confined in a particular institution. (Federal Correctional Institution at Petersburg, Virginia)

U.S. District Court
DISCIPLINE

Turner v. Johnson, 46 F.Supp.2d 655 (S.D.Tex. 1999). A state prisoner petitioned for habeas corpus relief challenging the outcome of three prison disciplinary hearings. The district court denied the petition. The court held that a prisoner has no constitutional right to organize a prison work shutdown or to circulate a petition facilitating such an action. The prisoner's own admissions and copies of the work stoppage materials were more than adequate, according to the court, to sustain the conclusions of hearing officers that the prisoner was guilty of disciplinary offenses for attempting to organize a prison work shutdown. (Wynne Unit, Walker County, Texas)

U.S. District Court
PAROLE

Van Straten v. Schwartz, 38 F.Supp.2d 1038 (E.D.Wisc. 1999). After revocation of his parole was upheld in administrative proceedings and affirmed by a state appeals court, a state prisoner sought federal habeas corpus relief. The district court denied the prisoner's petition, finding that a ten-week delay in the conduct of parole revocation proceedings following the prisoner's extradition from another state was not unreasonable or tantamount to a deprivation of due process. The court noted that the prisoner still had two months to serve on the other state's prison sentence, he did not assert a right to a speedy hearing, and he suffered no prejudice as a result of the delay. (Wisconsin)

U.S. District Court
PAROLE

Williams v. Johnson, 171 F.3d 300 (5th Cir. 1999). A parolee sought habeas corpus relief alleging constitutional violations arising from the State's failure to produce his parole officer at his revocation hearing. The district court denied relief and the appeals court affirmed, finding that the parolee was not harmed by the absence of the officer at the hearing. The court found that the parolee had a qualified right to confront and cross-examine witnesses and present evidence, and that he sufficiently invoked his due process right by making clear in his pre-hearing letter that he wanted his parole officer to be present for examination. But the court held that the state's failure to produce the parole officer did not actually contribute to the revocation decision. The appeals court also found that the policy of the Texas Board of Pardons and Paroles, which did not require parole officers to travel outside of their district area to attend revocation hearings, was not sufficient good cause to deny the parolee's due process right to have his parole officer appear as a witness. (Texas Board of Pardons and Paroles)

U.S. District Court
TRANSFER
ALIEN

Wong v. Warden, FCI Raybrook, 171 F.3d 148 (2nd Cir. 1999). An inmate who was a Canadian citizen sought habeas corpus relief alleging that he was denied transfer to a Canadian prison, under the provisions of the Convention on the Transfer of Sentenced Persons, based on his race and national origin. The district court denied the petition and the appeals court affirmed. The appeals court held that the Department of Justice's decision to deny the inmate transfer to a Canadian prison was subject to judicial review, given the inmate's allegations of unconstitutional discrimination. (Federal Bureau of Prisons, FCI Raybrook, New York)

U.S. District Court
PAROLE

Woodley v. Department of Corrections, 74 F.Supp.2d 623 (E.D.Va. 1999). An inmate petitioned for a writ of habeas corpus challenging his parole revocation and a policy of the parole board that required him to serve the total remaining time of his sentence without consideration of good time allowances he had earned. The district court dismissed the action, finding that the revocation of the inmate's parole for failing to agree to pay the costs of living at a halfway house presented no cognizable constitutional grounds for habeas relief. The court found that the inmate had received all the constitutional due process to which he was entitled and that a policy change by the board did not violate the inmate's equal protection rights or create an ex post facto application of the law. The parole board had changed its policy to require that all persons violating parole after a

certain date must serve the entire unserved portion of the term originally imposed by the court. (Virginia Parole Board and Onesimus House, Virginia)

U.S. District Court
RELEASE DATE
SENTENCE

Zakiya v. Reno, 52 F.Supp.2d 629 (E.D.Va. 1999). An inmate petitioned for habeas corpus relief and his petition was granted by the district court. The court ruled that the inmate, who refused to agree to pay a fine, could not be held longer than his judicially imposed sentence. The court noted that the executive branch may cut a sentence short, but altering the actual terms of the sentence and imposing a sentence in the first place are solely judicial acts. The court held that a statute that prohibited the release of a prisoner on supervision if he or she does not agree to pay an imposed fine authorizes the Bureau of Prison to deny good time credits, but does not authorize continued incarceration once the prisoner has served the entire sentence. (Federal Correctional Institution at Morgantown, West Virginia)

2000

U.S. Appeals Court
GOOD TIME

Abed v. Armstrong, 209 F.3d 63 (2nd Cir. 2000). A state prisoner petitioned for habeas corpus relief and the district court granted summary judgment against the prisoner. The appeals court affirmed, finding that a state prison administrative directive making inmates classified as safety threats ineligible to earn good time credit did not violate the Ex Post Facto Clause. The court noted that the prisoner had no protected liberty interest in the opportunity to earn good time credit. According to the appeals court, the inmate received all process he was due before being classified as a safety threat because a hearing was held before the inmate was classified, his status was reviewed every six months, and he had the right to request reconsideration of his status at any time in writing. (Connecticut Department of Corrections)

U.S. District Court
RELEASE DATE
PAROLE

Allred v. U.S. Parole Com'n, 109 F.Supp.2d 390 (E.D.Pa. 2000). A federal prisoner filed a habeas corpus petition challenging the recalculation of his presumptive parole release date. The district court granted the petition, finding that the parole commission's determination that the prisoner committed behavior that constituted new criminal conduct in prison that extended into the community, warranting a 16-month extension of the prisoner's presumptive parole release date, was not supported by a rational basis. The court found that money orders that were recovered from the prisoner had not been altered and the commission failed to explain why the prisoner's mere possession of money orders constituted conduct which extended into the community. (Schuylkill Federal Correctional Institution, Pennsylvania, and United States Parole Commission)

U. S. Supreme Court
AEDPA- Antiterrorism
& Effective Death
Penalty Act

Artuz v. Bennett, 121 S.Ct. 361 (2000). The United States Supreme Court held that an application for state postconviction relief or collateral review is "properly filed" as required to toll the period under the Antiterrorism and Effective Death Penalty Act (AEDPA) when its delivery and acceptance are in compliance with the applicable laws and rules governing the filings. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
MEDICAL CARE

Barron v. Keohane, 216 F.3d 692 (8th Cir. 2000). A federal prisoner who suffered from kidney disease petitioned for a writ of habeas corpus alleging that failure of prison officials to provide him with access to a kidney transplant violated his constitutional rights. The district court denied the petition and the appeals court affirmed. The appeals court held that medical studies cited by the prisoner which indicated that patients who receive transplants have better survival rates than those who do not receive transplants were insufficient to show that the course of treatment provided by the prison (dialysis) demonstrated deliberate indifference to his serious medical needs. (Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
SEX OFFENDER

Burr v. Snider, 234 F.3d 1052 (8th Cir. 2000). After his conviction for violating North Dakota's sex offender registration statute was affirmed, an offender petitioned for habeas corpus relief in federal district court. The court denied the petition and the offender appealed. The appeals court affirmed, finding that North Dakota's sex offender registration statute did not violate the constitutional prohibition against ex post facto punishment. The offender had moved to a new address without notifying police, in violation of the statute. (North Dakota)

U.S. Appeals Court
DISCIPLINE

DeWalt v. Carter, 224 F.3d 607 (7th Cir. 2000). A prisoner brought a § 1983 action against correctional employees for alleged violations of his constitutional rights. The district court dismissed the complaint. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the prisoner could base a § 1983 claim on his loss of his prison job and the prisoner stated a claim for violation of his constitutional rights based on the loss of his job. The appeals court also held that the prisoner stated a viable claim for retaliation by alleging that officials acted to have him removed from his job after he filed a grievance against an officer. (Dixon Correctional Center, Illinois)

U.S. District Court
TRANSFER

Evans v. Holm, 114 F.Supp.2d 706 (W.D.Tenn. 2000). A prisoner who had been transferred to a privately-operated out-of-state prison petitioned for habeas corpus relief. The district court denied the petition, finding that the transfer did not amount to a deprivation of liberty. The court noted that the prisoner did not reside in the other state because he had not chosen to live there and would be returned to the prosecuting state for release and any post-release supervision. The court found that a prisoner does not enjoy a federal constitutional right to be confined within a convicting state's borders, regardless of that state's statutes or prison regulations. (West

Tennessee Detention Facility, operated by the Corrections Corporation of America)

U.S. Appeals Court
ACCESS TO COURT

Felder v. Johnson, 204 F.3d 168 (5th Cir. 2000). An inmate sought habeas corpus relief and his petition was denied by the district court as time-barred. The appeals court affirmed, finding that the alleged inadequacies of the inmate's prison law library were not "rare and exceptional" circumstances that warranted extension of the time to file. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PAROLE

Furnari v. Warden, Allenwood Federal Corr. Inst., 218 F.3d 250 (3rd Cir. 2000). A federal prisoner who had been convicted of racketeering charges challenged his denial of parole by filing a petition for a writ of habeas corpus. The federal district court denied relief and the prisoner appealed. The appeals court vacated and remanded with directions, finding that the Parole Commission violated a statute and regulations when it failed to provide a new statement of reasons explaining the denial of parole in light of new information regarding a witness' credibility. The Parole Commission had assigned the prisoner to "Category Eight," which is the most severe category under the parole regulations and meant a fifteen-year postponement of parole consideration. (Allenwood Federal Correctional Institution, Pennsylvania)

U.S. Appeals Court
DISCIPLINE

Gaither v. Anderson, 236 F.3d 817 (7th Cir. 2000). A state prisoner who was disciplined for theft petitioned for habeas corpus relief. The district court denied the petition and the appeals court affirmed. The appeals court found that a security videotape, a corrections officer's report indicating that the videotape showed the prisoner taking a mattress, and a second officer's statements regarding the prisoner's possession of the mattress, provided "some evidence" as required to support the prison disciplinary board's decision. The court held that the disciplinary board's refusal to allow the prisoner to view the videotape did not warrant habeas relief. (Indiana State Prison)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Henson v. U.S. Bureau of Prisons, 213 F.3d 897 (5th Cir. 2000). A federal prisoner petitioned for habeas corpus relief challenging the loss of good time credit as the result of a disciplinary proceeding. The district court denied the petition and the appeals court affirmed. The appeals court held that the prisoner did not have a due process right to a second test of the residue from his pipe that had tested positive for marijuana, after a urinalysis test of the prisoner came back negative. The inmate had lost fourteen days of good time credit and lost visiting, commissary and telephone privileges for thirty days. (Federal Bureau of Prisons)

U.S. Appeals Court
ALIEN

Ma v. Reno, 208 F.3d 815 (9th Cir. 2000). An alien petitioned for habeas corpus relief arguing that the Immigration and Naturalization Service (INS) violated his due process rights by indefinitely detaining him after ordering him removed to Cambodia, which would not permit his return. The district court granted relief and the INS appealed. The appeals court affirmed, holding that because no reasonable likelihood existed that the alien could be removed to Cambodia in the foreseeable future, the INS could not continue to detain him beyond the 90-day statutory removal period. (Immigration and Naturalization Service, Seattle, Washington)

U.S. Appeals Court
DISCIPLINE
GOOD TIMES

Malchi v. Thaler, 211 F.3d 953 (5th Cir. 2000). A state prisoner filed a petition for habeas corpus relief based on the alleged denial of his due process rights in connection with a disciplinary proceeding. The district court granted the petition and the state appealed. The appeals court reversed, finding that the prisoner's thirty day loss of commissary privileges and cell restriction as the result of a disciplinary action did not implicate due process concerns. The court also found that the effect of the change in the prisoner's good-time earning status upon the timing of his release was too speculative to afford him a constitutionally recognized right to a particular time-earning status. (Telford Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
DISCIPLINE
GOOD TIME

Mayers v. Anderson, 93 F.Supp.2d 962 (N.D.Ind. 2000). A state prisoner petitioned for a writ of habeas corpus challenging the loss of good time credits. The district court found that the prison adjustment board violated the prisoner's due process rights when it failed to review a security videotape which the prisoner claimed would establish his innocence, or to state on the record that viewing the tape would be hazardous to institutional safety or correctional goals. According to the court, a state prisoner had to be given the opportunity to request documentary and videotape evidence either at the screening stage of prison disciplinary proceedings or at the hearing itself. The inmate had been deprived of ninety days of earned good time credit. (Indiana State Prison)

U.S. Appeals Court
TRANSFER

Montez v. McKinna, 208 F.3d 862 (10th Cir. 2000). A prisoner brought a pro se petition for a writ of habeas corpus challenging his interstate transfers under state and federal law. The district court dismissed the claims and the appeals court dismissed the appeal. The appeals court held that federal law did not prohibit the inmate's transfer from one state to a private facility in another state. The inmate had been transferred from a Wyoming state-operated prison to a private Texas correctional facility and then to a private Colorado correctional facility. (Cowley County Correctional Facility, Colorado)

U.S. District Court
PAROLE

Mulberry v. Neal, 96 F.Supp.2d 1149 (D.Colo. 2000). A state prisoner applied for a writ of habeas corpus challenging his denial of parole. The district court denied the application, finding that the decision of the state parole board to deny the prisoner parole was not an abuse of discretion because the board had a rational basis for the denial, and that the prisoner had no protected

interest in being granted parole. The court also held that the retroactive application of a change in the state parole board's reconsideration policy did not violate the Ex Post Facto Clause. (Arrowhead Correctional Facility, Colorado)

U.S. District Court
ALIEN

Nguven v. Fasano, 84 F.Supp.2d 1099 (S.D.Cal. 2000). Aliens who were subject to final orders of deportation challenged their continued detention awaiting deportation with a habeas petition. The district court held that when the removal of a deportable alien is not realistic, the alien should be presumptively released unless the government can show that its interests, such as protecting the community, are not excessive in relation to the restriction placed on the alien's liberty. (Immigration and Naturalization Service, San Diego, California)

U.S. District Court
DISCIPLINE
GOOD TIME

Piggie v. Hanks, 98 F.Supp.2d 1003 (N.D.Ind. 2000). A state prisoner petitioned for a writ of habeas corpus after a prison conduct adjustment board found him guilty of sexual assault and sentenced him to disciplinary segregation and recommended a demotion in his good time credit class. The district court granted the petition, finding that the inmate was entitled to have the board either consider a videotape that may have recorded the incident at issue or to have the board state on the record why it would not do so. The court noted that the videotape was available at the time the hearing was held and the prisoner had made a timely request for it to be viewed by the board. (Indiana State Prison)

U.S. Appeals Court
TRANSFER

Rael v. Williams, 223 F.3d 1153 (10th Cir. 2000). A state prisoner who was incarcerated in a privately-run prison facility under a contract between the state and a private corporation filed a habeas corpus petition. The district court dismissed the petition. The appeals court held that the fact that a state prisoner is transferred to, or must reside in, a privately operated facility, simply does not raise a federal constitutional claim. (Lea County Correctional Facility, New Mexico, operated by the Wackenhut Corporation)

U.S. Appeals Court
PAROLE
RELEASE DATE

Scott v. Baldwin, 225 F.3d 1020 (9th Cir. 2000). An inmate petitioned for habeas corpus relief alleging that a state's refusal to provide biennial reviews of his dangerous offender status was an ex post facto violation. The district court denied the petition and the appeals court affirmed. The appeals court held that the inmate's argument that elimination of psychological examinations of dangerous offenders as the result of an amendment to state law increased the risk that he would receive a longer sentence because the parole board would have less information to review his case, was too speculative to support an ex post facto claim. (Eastern Oregon Correctional Institution)

U.S. District Court
ACCESS TO COURT

Scott v. Kelly, 107 F.Supp.2d 706 (E.D.Va. 2000). A prisoner brought a pro se § 1983 action alleging denial of access to court. The district court dismissed the case, finding that the prisoner's failure to specify how corrections officials' alleged violation of his photocopying rights impeded his work on a habeas corpus petition, regardless of whether a photocopying violation was unreasonable. The prisoner had alleged that officials denied him access to photocopying services in retaliation for his filing of complaints against them. (Deep Meadows Corrections Center, Virginia)

U.S. District Court
ALIEN

Sengchanh v. Lanier, 89 F.Supp.2d 1356 (N.D.Ga. 2000). An alien subject to final deportation filed a petition for a writ of habeas corpus alleging that his prolonged detention pending deportation violated his due process rights and his right to be free from cruel and unusual punishment. The district court held that the alien's three-year detention was sufficient to raise substantive due process concerns, remanding the case. (Immigration and Naturalization Service, Georgia)

U.S. District Court
ACCESS TO COURTS
AEDPA- Antiterrorism
& Effective Death
Penalty Act

Stokes v. Miller, 216 F.Supp.2d 169 (S.D.N.Y. 2000). An offender convicted of second degree felony murder petitioned for habeas corpus relief. The district court denied the petition, finding that the alleged "nightmare" experience of the offender when he used a prison law library did not warrant equitable tolling of the one-year limitation period under the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). (New York)

U.S. Appeals Court
PAROLE
GOOD TIME

Warren v. Baskerville, 233 F.3d 204 (4th Cir. 2000). A state prisoner petitioned for habeas relief and was denied by the district court. The appeals court affirmed, finding that the state parole board did not violate the Ex Post Facto clause when, upon revoking mandatory parole, it also revoked previously-earned good time credits. The court noted that the parole board possessed the authority to revoke the good time credits under a statute in effect before the prisoner committed his offenses, even though the Board may have relied on a subsequently-enacted statute that more explicitly granted the same authority. (Virginia Parole Board)

U.S. Appeals Court
DISCIPLINE

Webb v. Anderson, 224 F.3d 649 (7th Cir. 2000). A state prisoner filed a petition for a writ of habeas corpus after he lost 90 days of good time credit for drug use. The district court denied the petition and the appeals court affirmed. The appeals court held that a toxicology report and chain of custody slip constituted "some evidence" supporting the decision to impose disciplinary sanctions on the inmate for drug use. The chain of custody slip confirmed the collection of a urine sample and the sealing of that specimen, transmission of the specimen to a hospital laboratory, and receipt of the hospital laboratory in sealed condition. The court noted that even meager proof will suffice to satisfy the minimum requirements of procedural due process in a prison disciplinary action. (Indiana State Prison)

U.S. Appeals Court DEATH PENALTY	<u>Young v. Hayes</u> , 218 F.3d 850 (8 th Cir. 2000). A prisoner under the sentence of death filed a habeas corpus petition alleging that the actions of a district attorney who threatened to fire an attorney under her supervision if she provided information to the Governor in connection with a clemency petition the prisoner wished to file, violated his due process rights. The district court granted summary judgment to the defendant but the appeals court reversed and remanded, granting a stay of execution. The appeals court held that the Due Process Clause does not require that a state have a clemency procedure, but does require that if such a procedure is created the state's own officials, must refrain from frustrating it by threatening the job of a witness. (Potosi Correctional Center, Missouri)
2001	
U.S. District Court PAROLE	<u>Alexander v. Johnson</u> , 217 F.Supp.2d 780 (S.D.Tex. 2001). A prisoner filed a second habeas corpus petition regarding the constitutionality of a stalking statute, under which the prisoner's parole had been revoked. The district court granted the petition. The court held that the continued confinement of the prisoner, whose parole was revoked for violation of a state stalking statute that was later found facially unconstitutional, violated his due process rights. (Texas Department of Criminal Justice, Institutional Division)
U.S. Appeals Court DISCIPLINE GOOD TIME	<u>Hudson v. Johnson</u> , 242 F.3d 534 (5 th Cir. 2001). A prisoner filed a habeas corpus petition alleging that he was unconstitutionally incarcerated because a prison disciplinary board, without any evidence, found him guilty of committing riot and revoked his good time credits. The district court denied the petition and the appeals court affirmed. The appeals court held that an officer's identification of the prisoner as a participant in a riot constituted "some evidence" and that the prisoner's loss of 3,530 days of good time credit was warranted. (Texas Department of Criminal Justice, Institutional Division)
U.S. Supreme Court RELEASE DATE	<u>Lopez v. Davis</u> , 121 S.Ct. 714 (2001). A federal prisoner convicted of possession with the intent to distribute methamphetamine petitioned for a writ of habeas corpus challenging a federal Bureau of Prisons (BOP) regulation. The regulation categorically denied early release to prisoners, based on completion of a drug treatment program, if a prisoner's current offense was a felony attended by the carrying, possession or use of a firearm. The district court granted the petition and the appeals court reversed. The United States Supreme Court held that the BOP had the discretion, under the governing federal statute, to promulgate a regulation that categorically denies early release to prisoners whose felonies involved the use of a firearm. The court noted that the statute provided that the BOP "may" reduce the sentence of a nonviolent offender who has successfully completed a drug treatment program, and the statute did not limit the considerations the BOP could use to guide its decisions, and the BOP was not required to make only individualized determinations or to consider only postconviction conduct. (Federal Bureau of Prisons)
U.S. Appeals Court PAROLE	<u>Maddox v. Elzie</u> , 238 F.3d 437 (D.C.Cir. 2001). After his parole was revoked and he was reincarcerated, a prisoner sought a writ of habeas corpus challenging the parole board's decision. The district court granted the petition in part and the parole board appealed. The appeals court reversed, finding that the parole board's ex parte meeting with a trial prosecutor did not deprive the prisoner of due process and did not give rise to a presumption of vindictiveness on the part of the prosecutor. The court noted that the meeting with the prosecutor was inappropriate, but that the prisoner had not been deprived of due process in that he had the opportunity to present his full case to the board, was represented by counsel at the revocation hearing, and the board had sufficient evidence to justify revocation. (District of Columbia Board of Parole)
U.S. Appeals Court DISCIPLINE GOOD TIME	<u>Montgomery v. Anderson</u> , 262 F.3d 641 (7 th Cir. 2001). A state prisoner filed for habeas corpus relief alleging that the state had violated the Due Process Clause of the Fourteenth Amendment when it placed him in disciplinary segregation and reduced his credit-earning class. The district court denied the petition and the appeals court affirmed. The appeals court held that the alleged inadequacies of the prison disciplinary board's finding of facts did not deny the prisoner due process, where the board explicitly relied on a conduct report and investigation which supplied details. The court noted that state prisoners have "more than a subjective hope for good-time credit" in a system that initially puts every prisoner in a class which allows good-time credit to accrue unless there is a violation of an enumerated rule. (Indiana State Prison)
U.S. District Court GOOD TIME PAROLE	<u>Moore v. Hofbauer</u> , 144 F.Supp.2d 877 (E.D.Mich. 2001). A state parolee petitioned for habeas corpus relief alleging that his parole revocation hearing was not timely and that a warden had improperly rescinded his good time credits. The district court denied the petition. The district court held that the state warden's discretionary decision not to award special good time sentence credits to the parole absconder, for the period that he was at large in the community and tested positive for drugs, did not violate the parolee's due process rights. The court found that the final hearing before revocation of parole, which was held two months after the parolee was taken into custody on a parole violator warrant, was reasonably timely even though a state law required the hearing to be held within 45 days. (Marquette Branch Prison, Michigan)
U.S. District Court SEX OFFENDERS	<u>Rogers v. Illinois Dept. of Corrections Spec. Unit</u> , 160 F.Supp.2d 972 (N.D.Ill. 2001). Present and former civil detainees in state correctional centers brought an action against psychologists who had recommended their confinement as "sexually violent persons" under Illinois' Sexually Violent

Persons Commitment Act (SVPCA). The district court dismissed the claims of the present detainees, noting that they could petition for habeas corpus relief to challenge their current confinement. But the court found that the former detainees asserted a constitutional violation of equal protection by alleging that their race was a motivating factor for selecting them for confinement from a pool of eligible defendants, insofar as their race related to the race of their victims. The former detainees are all African-American offenders who committed crimes against at least one Caucasian victim. (Sheridan Correctional Center and Joliet Correctional Center, Illinois)

U.S. District Court
CREDIT FOR TIME
SERVED

Russo v. Johnson, 129 F.Supp.2d 1012 (S.D.Tex. 2001). A state prisoner petitioned for habeas corpus relief and the district court denied the petition. The court found that absent a state statute, the prisoner had no federal constitutional right to credit for time spent in out-of-state custody while he was an absconder from the state's criminal justice system. (Texas Department of Criminal Justice, Institutional Division)

U.S. Supreme Court
SEX OFFENDER

Seling v. Young, 121 S.Ct. 727 (2001). An inmate who was being held under a state sexually violent predator statute petitioned for a writ of habeas corpus challenging the constitutionality of the law. The case eventually reached the United States Supreme Court, which held that the state supreme court's prior determination that the statute was civil rather than criminal precluded the inmate's double jeopardy and ex post facto challenge based on conditions of confinement. According to the Court, there is no federal constitutional bar to civil confinement of sexually violent predators with untreatable mental conditions, since the state has an interest in protecting the public from dangerous individuals with both treatable and untreatable conditions. (Community Protection Act of 1990, State of Washington)

U.S. District Court
PAROLE

Sparks v. Gaines, 144 F.Supp.2d 9 (D.D.C. 2001). A District of Columbia prisoner filed a petition for a writ of habeas corpus, alleging that his due process rights had been violated by the failure of the U.S. Sentencing Commission to hold a parole revocation hearing in deciding whether to reparole him. The district court denied the petition and found that the Commission was not required to hold a parole revocation hearing. (District of Columbia Board of Parole)

U.S. District Court
JUVENILE

Steele v. Withrow, 157 F.Supp.2d 734 (E.D.Mich. 2001). An inmate in state court custody sought a writ of habeas corpus alleging the trial court abused its discretion by sentencing him as an adult. The federal district court denied the inmate's application, finding that the trial court's determination that the defendant should be sentenced as an adult for an offense which happened when the defendant was 15 years old was not unreasonable in light of the evidence presented. A probation agent had testified that the defendant was not amenable to treatment, was disruptive at a juvenile detention center, and would be dangerous if released at age 21. A social services agent had testified that the defendant should be sentenced as an adult based on the severity of his crime and his poor participation in the juvenile justice system. (Flint, Michigan)

U.S. District Court
PAROLE

Yahweh v. U.S. Parole Com'n, 158 F.Supp.2d 1332 (S.D.Fla. 2001). A parolee sought declaratory judgment that his conditions of his parole violated the Religious Freedom Restoration Act (RFRA) and the First Amendment, and he moved for a preliminary injunction. The district court held that as a matter of first impression, habeas corpus was not the exclusive means to challenge parole conditions, and that the conditions did not violate the parolee's free association rights. The parole conditions prohibited the parolee, who was a leader of a recognized religion, from worshiping, meeting, or communicating with followers without the prior written consent of his parole officer. The court noted that the underlying conviction established that the leader used religion as a means to exhort his followers to commit numerous racketeering acts including acts of murder. The conditions read, in part: "You shall not associate or have any contact with members of the Black Hebrew group. This includes direct or indirect contact, through any means, to include internet, television, radio, phone, written form or in person. This includes residence, employment, social or other activities, without the prior written approval of your U.S. Probation officer." (U.S. District Court, Southern Division, Florida)

2002

U.S. District Court
ALIEN

Alaka v. Elwood, 225 F.Supp.2d 547 (E.D.Pa. 2002). A lawful permanent resident alien filed a petition for a writ of habeas corpus, challenging her continued detention by the Immigration and Naturalization Service (INS), pending removal proceedings. The district court granted the petition, finding that the detention of the alien without providing her with an opportunity for an individualized determination of her risk of flight or danger to the community, violated her substantive due process rights. (York County Prison, Pennsylvania)

U.S. District Court
DEATH PENALTY

Dallas v. Haley, 228 F.Supp.2d 1317 (M.D.Ala 2002). A prisoner convicted of murder and sentenced to death sought a writ of habeas corpus to stay his execution. The district court granted the writ. The court found that the stay of execution was warranted to allow time to consider the case. (Alabama Department of Corrections)

U.S. Appeals Court
DISCIPLINE

Eads v. Hanks, 280 F.3d 728 (7th Cir. 2002). A state prisoner filed a habeas corpus petition alleging violation of his due process rights during a prison disciplinary hearing because one member of the disciplinary committee was allegedly the "live in boyfriend" of a female prison

guard who was a witness against the inmate. The district court denied the petition and the appeals court affirmed. The appeals court held that the prisoner failed to make a timely complaint of his concerns about the witness. (Indiana)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Espinoza v. Peterson, 283 F.3d 949 (8th Cir. 2002). A federal inmate sought judicial review of a prison disciplinary proceeding in which he lost 13 days of "good time" credit for fighting with another inmate, alleging his due process rights were violated in his disciplinary hearing. The district court denied habeas relief and the inmate appealed. The appeals court affirmed, finding that the refusal of prison authorities to disclose the identity of a confidential informant did not violate the inmate's procedural due process rights. The court also held that officials' refusal to transport a prisoner, who allegedly was involved in a fight with the inmate, to testify at the disciplinary hearing did not violate the inmate's procedural due process rights. The court noted that the hearing was delayed to obtain a written statement from the prisoner and that transporting the prisoner posed an obvious security risk. (Federal Corr'l Institute at Sandstone, Minnesota)

U.S. Appeals Court
ALIENS

Hoang v. Comfort, 282 F.3d 1247 (10th Cir. 2002). Three aliens who were being held under the mandatory detention requirements of the Immigration and Nationality Act (INA) challenged the constitutionality of the requirement. The district court granted relief and the appeals court affirmed. The appeals court held that the aliens were not required to exhaust their administrative remedies and that the provision of the INA that required mandatory detention pending administrative removal proceedings violated the aliens' due process rights. (U.S. Immigration and Naturalization Service, Colorado)

U.S. District Court
DISCIPLINE
GOOD TIME

Hoskins v. McBride, 202 F.Supp.2d 839 (N.D.Ind. 2002). A state prisoner filed for a writ of habeas corpus, challenging revocation of earned good time credits and demotion in his credit time earning class, following a disciplinary proceeding. The district court denied the petition, finding that prison officials did not deny the prisoner due process by failing to compel witnesses to name a "certain offender" named in a tip regarding drug trafficking, nor by denying him permission to view security videos and other physical evidence. The court noted that while prisoners have the right to call witnesses to testify on their behalf at disciplinary hearings when it is consistent with institutional safety and correctional goals, but that this is not an unlimited right. (Indiana State Prison in Michigan City)

U.S. Appeals Court
ALIEN

Kim v. Ziglar, 276 F.3d 523 (9th Cir. 2002). A lawful permanent resident alien filed a habeas corpus petition challenging the no-bail provision of the Immigration and Nationality Act, under which he had been held for six months. The district court entered an order holding the statute unconstitutional on its face and directing the Immigration and Naturalization Service (INS) to hold a bail hearing. The government appealed and the appeals court affirmed, finding that the no-bail provision, as applied to the alien, violated the alien's due process right to an individualized determination of his risk of flight or danger to the community. (U.S. District Court, Northern District of California)

U.S. District Court
TRANSFER

Koos v. Holm, 204 F.Supp.2d 1099 (W.D.Tenn. 2002). A state prisoner petitioned for a writ of habeas corpus, challenging his transfer to a private out-of-state prison. The district court denied relief, finding that the state did not violate the prisoner's due process rights nor waive jurisdiction over him by transferring him. (West Tennessee Detention Facility)

U.S. Appeals Court
DISCIPLINE

Martinez v. Hedrick, 36 Fed.Appx. 209 (7th Cir. 2002). A state prisoner filed for a writ of habeas corpus challenging a disciplinary board's reprimand for entering into an unauthorized contract. The district court denied the petition and the appeals court affirmed. The appeals court held that the inmate was not denied due process. The alleged contract was a subscription to *Men* magazine, unauthorized because the subscription was not prepaid. The court noted that it has not yet addressed whether § 2254 or the Due Process Clause are implicated when an inmate alleges only that a prison decision caused his *retention in*, rather than *demotion to*, a particular credit-earning class. (Indiana)

U.S. Appeals Court
PAROLE

McQuillion v. Duncan, 306 F.3d 895 (9th Cir. 2002). A state prison inmate petitioned for habeas relief after his parole date was rescinded. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the rescission panel's conclusion that the panel that granted parole had not thoroughly considered the nature of the crimes (murder), was unsupported by evidence. The appeals court also held that the rescission panel's conclusion that the inmate had not completed vocational training and did not have a prior vocational skill, was insufficient grounds for rescission of parole. (California Board of Prison Terms)

U.S. Appeals Court
DISCIPLINE

Pannell v. McBride, 306 F.3d 499 (7th Cir. 2002). A state inmate sought federal habeas corpus relief after a prison conduct adjustment board found him guilty of possessing a deadly weapon. The district court denied the petition and the inmate appealed. The appeals court vacated and remanded, finding that the inmate's claim was prematurely rejected by the district court. The inmate had requested, in writing, that the officers who had searched his cell be allowed testify in his disciplinary hearing, but prison officials denied his request for witnesses. The appeals court held that the officers' could have aided the inmate's defense that he was unaware that a television

in his cell contained weapons. As a result of his disciplinary hearing, the inmate had been sanctioned with two years in disciplinary segregation and a demotion of his credit-earning class. (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
ACCESS TO COURTS

Pearl v. Cason, 219 F.Supp.2d 820 (E.D.Mich. 2002). An offender petitioned for habeas corpus relief and the district court denied the petition. The court held that shackling the prisoner did not deprive him of a fair trial. The offender's leg had been shackled during his trial, but the court found that the offender failed to show that the jury was able to see his leg chains. The court noted that the offender took the stand while the jury was out of the courtroom, and that the jury was aware that the offender was in jail pending trial. (Mound Correctional Facility, Michigan)

U.S. Appeals Court
DISCIPLINE

Piggie v. McBride, 277 F.3d 922 (7th Cir. 2002). A state prisoner filed a habeas corpus petition alleging he was denied due process of law because a prison disciplinary board failed to review a videotape of the incident that gave rise to his disciplinary charges. The district court denied the petition and the prisoner appealed. The appeals court vacated and remanded, finding that district court erred in dismissing the petition. The district court had found that the prisoner had failed to submit a timely request for the surveillance videotape and therefore the refusal of the disciplinary board to review it was not a violation of the prisoner's due process rights. The prisoner was charged with sexually assaulting a female correctional officer by squeezing her buttocks when she was passing him in a prison hallway. The prisoner contended that he requested review of the surveillance videotape at a disciplinary interview and was told that he would have to secure a court order. (Indiana)

U.S. Appeals Court
DEATH PENALTY

Sanchez-Velasco v. Secretary of Dept. of Corr., 287 F.3d 1015 (11th Cir. 2002). An attorney, who worked for an entity that had been created by a state legislature to provide post-conviction representation to indigent death row inmates, filed a federal habeas corpus petition on behalf of a state death row inmate who did not oppose the execution of his death sentence. The district court granted the attorney limited standing to proceed and then dismissed the petition. The appeals court affirmed, finding that the attorney did not have a significant relationship with the prisoner and thus did not have "next friend" standing to seek habeas relief. (Capital Collateral Regional Counsel of Florida)

U.S. Appeals Court
RELEASE DATE

Seacrest v. Gallegos, 30 Fed.Appx. 755 (10th Cir. 2002). [Not published.] A prisoner challenged the refusal of the federal Bureau of Prisons to grant him an early release after he completed a Residential Drug Abuse Program. The district court denied the prisoner's habeas corpus petition and the appeals court affirmed. The appeals court held that there was no contractual relationship between the prisoner and the Bureau as to his early release eligibility status. (Colorado)

U.S. District Court
DISCIPLINE

Seehausen v. Van Buren, 243 F.Supp.2d 1165 (D.Or. 2002). A federal prisoner brought a habeas corpus claim challenging the imposition of discipline for phoning a former inmate who was on home confinement. The district court held that imposing discipline on the prisoner for violation of a telephone policy of which he did not have fair notice, infringed on his due process rights. The court noted that the inmate did not have notice that the policy, which prohibited contacting former inmates in halfway houses, also extended to telephoning former inmates confined at home. (Federal Correctional Institution-Sheridan, Oregon)

U.S. District Court
ALIEN

Soto-Ramirez v. Ashcroft, 228 F.Supp.2d 566 (M.D.Pa. 2002). An alien whose immigration parole as part of the Mariel boatlift had been revoked for criminal convictions, brought a writ of habeas corpus to challenge his indefinite detention pending removal. The district court denied the writ, finding that he was not a legal alien who had formally "entered" or been "admitted" to the United States, and had no rights beyond those of an alien at territorial borders. The court held that indefinite detention for the alien, whose country of origin would not accept repatriation, did not violate the Due Process Clause. (Federal Corr'l. Institution, Allenwood, Pennsylvania)

U.S. Appeals Court
SENTENCE

Taylor v. Sawyer, 284 F.3d 1143 (9th Cir. 2002). A federal prisoner filed a habeas corpus petition alleging that the Bureau of Prisons violated his constitutional rights by refusing to give effect to the concurrent service of his state and federal sentences. The district court denied the petition and the appeals court affirmed. The court found that the Bureau was exercising its discretion to decline to treat the prisoner's federal and state sentences as concurrent. (Oregon State Pen.)

U.S. Appeals Court
DAMAGES
INJUNCTIVE RELIEF

Thompson v. Carter, 284 F.3d 411 (2nd Cir. 2002). A state prisoner brought a pro se civil rights action against a state correctional facility and the district court granted the defendants' motion to dismiss. The inmate appealed and the appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the prisoner's request for return of medications that were seized by prison officials was still active after he was transferred to another facility. The appeals court found that the prisoner was not barred by statute from receiving nominal damages even though he was seeking to recover for mental or emotional injury without a prior showing of physical injury. The court also held that the inmate could seek compensatory damages for the loss of property. (Clinton Correctional Facility, New York)

U.S. District Court
CONDITIONS OF
CONFINEMENT

U.S. v. Flores, 214 F.Supp.2d 1193 (D.Utah 2002). A prisoner who was indicted for alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violations, filed a writ of habeas corpus challenging restrictions placed on his conditions of confinement. The district court denied

the petition. The court held that the secure confinement of the prisoner was justified and that restrictions placed upon his confinement were warranted because the prisoner was a flight risk, and a danger to others. The court upheld restrictions on the prisoner's mail that required mail to be read for threats, conspiracy, or obstruction of justice efforts, because members of the prisoner's gang outside the prison could act on his instructions. (Utah State Prison)

U.S. Appeals Court
RELEASE DATE

Walker v. Thompson, 288 F.3d 1005 (7th Cir. 2002). A state prisoner brought a § 1983 action against a former state governor and other officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the claim that the defendants conspired against him and other prisoners to keep them in prison beyond their mandatory release dates was properly asserted under the federal habeas corpus statute, but that the prisoner sufficiently stated a § 1983 claim with his allegations that the defendants retaliated against him for using the prison law library by refusing to let him exercise outside of his cell. (Wisconsin)

2003

U.S. Appeals Court
ALIENS
JURISDICTION

Al Odah v. U.S., 321 F.3d 1134 (D.C.Cir. 2003). Aliens being detained by the United States government at the U.S. Naval Base at Guantanamo Bay, Cuba, brought actions contesting the legality and conditions of their confinement. The district court dismissed the action for lack of jurisdiction and the detainees appealed. The appeals court affirmed, finding that the privilege of litigation did not extend to aliens in military custody outside of United States territory. (U.S. Naval Base at Guantanamo Bay, Cuba)

U.S. Appeals Court
JUVENILE
SENTENCE

Armstrong v. Bertrand, 336 F.3d 620 (7th Cir. 2003). A juvenile who had received an adult sentence of 20 years for first-degree reckless homicide sought a federal writ of habeas corpus. The district court denied the petition and the juvenile appealed. The appeals court affirmed, finding that state statutes governing the sentencing of juvenile defendants did not create an impermissible irrebuttable presumption of an adult sentence for juveniles charged with intentional homicide, and were not unconstitutionally vague. (Wisconsin)

U.S. District Court
PAROLE

Boddie v. New York State Division of Parole, 277 F.Supp.2d 280 (S.D.N.Y. 2003). A state prisoner filed a pro se petition for a writ of habeas corpus, challenging his conviction. The district court denied the petition, finding that a parole board's actions in conducting a parole hearing via teleconferencing did not violate the prisoner's equal protection rights. The court held that the parole board's actions in conducting the parole hearing via teleconferencing was neither irrational nor arbitrary and could not amount to an equal protection violation under the "class of one" disparate treatment theory. According to the court, the use of teleconferencing technology did not deprive the prisoner of a personal interview required by state parole procedures, and the prisoner was not prejudiced. (Arthur-Kill Correctional Facility, New York)

U.S. District Court
PAROLE

Boddie v. New York State Div. of Parole, 288 F.Supp.2d 431 (S.D.N.Y. 2003). A state prisoner petitioned for a writ of habeas corpus after he was denied parole. The district court denied the petition. The court held that a parole board's actions in conducting a parole hearing via teleconferencing did not violate the prisoner's equal protection rights. The court found that the parole board's actions were neither irrational nor arbitrary, where the teleconferencing technology was not used to deprive the prisoner of a personal interview, as required by state law. The court noted that the prisoner did not object to the electronic format of his parole hearing at the time of the hearing. (Arthur Kill Correctional Facility, New York)

U.S. District Court
ALIEN

Bonsol v. Perryman, 240 F.Supp.2d 823 (N.D.Ill. 2003). A permanent resident alien who was being detained by the Immigration and Naturalization Service (INS) under a statute requiring detention of aliens who are deportable because of their criminal offenses, petitioned for habeas corpus relief. The district court held that it had jurisdiction over the constitutional challenge to the statute governing detention of criminal aliens. The court found that the mandatory detention provision of the statute, as applied to a legal resident alien who in good faith challenged his removability, without an individualized bond hearing, violated the alien's substantive due process rights. (Federal District Court, Northern District, Illinois)

U.S. Appeals Court
AEDPA- Antiterrorism
and Effective Death
Penalty Act
ACCESS TO COURTS

Egerton v. Cockrell, 334 F.3d 433 (5th Cir. 2003). A prisoner convicted of aggravated robbery petitioned for federal habeas relief. The district court dismissed the petition as time-barred under the provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). The prisoner appealed. The appeals court vacated and remanded. The court held that the prison's failure to provide a copy of AEDPA constituted an "impediment...created by state action," absent any evidence that the prisoner had actual knowledge of AEDPA and its limitations period. (Middleton Transfer Facility, Texas)

U.S. Appeals Court
PAROLE
GOOD TIME
EX POST FACTO

Hunter v. Ayers, 336 F.3d 1007 (9th Cir. 2003). A state prisoner filed a federal habeas corpus petition, alleging that application of a change in parole regulations removed his right to restoration of lost good time, in violation of the ex post facto clause. The district court granted the writ and the appeals court affirmed. The appeals court held that application of the amended prison regulations to deny the inmate restoration of good time credits violated the ex post facto clause, where the regulations were not amended until after the inmate's offense. The court found

that a parole regulation in effect at the time of the infraction was not rendered invalid by a change in the statute governing the good time system, because the new regulation made restoration of forfeited credits discretionary, rather than mandatory, and did not prohibit the restoration of good time. (California Department of Corrections)

U.S. District Court
ALIEN

Jarno v. Lewis, 256 F.Supp.2d 499 (E.D.Va. 2003). An immigration detainee who was held in a regional jail pursuant to a contract with federal authorities brought a civil rights suit against the regional jail authority, jail superintendent, officers who allegedly attacked him, and Immigration and Naturalization Service officials. The district court held that the receipt of federal funds in consideration of a contract to temporarily house federal detainees did not constitute "federal financial assistance" for the purpose of a national origin claim under Title VI of the Civil Rights Act. The detainee alleged that his injuries resulted from the authority's alleged failure to properly train its officers and that the authority condoned the use of excessive force. (Piedmont Regional Jail, Virginia)

U.S. Appeals Court
GOOD TIME

Northern v. Hanks, 326 F.3d 909 (7th Cir. 2003). A state prisoner whose demotion to a lower credit-earning class was affirmed by a prison disciplinary reviewing authority, petitioned for a writ of habeas corpus. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that while the prisoner had a protected liberty interest in his credit-earning class, his due process rights were not violated. (Indiana Correctional Industrial Facility)

U.S. District Court
PAROLE
EX POST FACTO

Pindle v. Poteat, 360 F.Supp.2d 17 (D.D.C. 2003). A District of Columbia prisoner petitioned for a writ of habeas corpus after the rules pertaining to his eligibility for parole were modified. The court held that a change of parole rules, from a system that would have allowed for the grant of parole to a particular prisoner, to a system which did not allow for parole for that prisoner based upon the same facts, did not deprive the prisoner of a mandatory right to parole and therefore did not violate the ex post facto clause. The court noted that the system merely provided guidelines that could have been exceeded in the discretion of the parole board, and there was some flexibility in the application of its guidelines. (United States Parole Commission)

U.S. District Court
DISCIPLINE

Risdal v. Iowa, 243 F.Supp.2d 970 (S.D.Iowa 2003). A prisoner brought a pro se habeas corpus proceeding challenging the imposition of prison discipline. The defendants moved to dismiss the case based on a procedural default in state post-conviction proceedings. The district court denied the motion, finding that the state rule that requires litigants to have been unsuccessful in three or more suits to post a cost bond, infringed on a fundamental liberty right as applied to petitions filed by state prisoners. The court found that the state could not constitutionally block access to postconviction relief by applying a civil rule that permitted the court to impose a stay until any litigant, who had filed three or more unsuccessful actions in the past five years, posted a cost bond. (Iowa State Penitentiary)

U.S. Appeals Court
ALIEN
ACCESS TO COURT

Rosales-Garcia v. Holland, 322 F.3d 386 (6th Cir. 2003). Two Cuban citizens filed a petition for a writ of habeas corpus alleging that their indefinite detention by the Immigration and Naturalization Service (INS) following revocation of their immigration parole violated their constitutional rights. The district court denied the petition and the aliens appealed. The appeals court reversed and remanded. The appeals court held that the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied to the assessment of whether the aliens' detention violated statutory and constitutional law. The court found that the holding of *Zadvydas v. Davis* contains an implicit reasonable time limitation, which applies to aliens who are removable on grounds of inadmissibility. The court held that even if the *Davis* holding did not apply to the two Cuban citizens who arrived as part of the Mariel boat lift in 1980, their indefinite detention independently raised due process concerns, such that an implicit six month reasonable-time limitation applied to them. (Immigration and Naturalization Service)

U.S. District Court
DISCIPLINE
GOOD TIME

Tyler v. McCaughtry, 293 F.Supp.2d 920 (E.D.Wis. 2003). A state prisoner filed a petition for a writ of habeas corpus, claiming that his due process rights were violated when a prison disciplinary committee revoked his good time credits. The state moved to dismiss and the district court denied the motion. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's legal resources were the cause for the petitioner's default of federal claims in state court. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
ALIEN

Uritsky v. Ridge, 286 F.Supp.2d 842 (E.D.Mich. 2003). An alien filed a petition for a writ of habeas corpus, alleging that he was being unlawfully detained by the U.S. Department of Homeland Security, in violation of his Fourth and Fifth Amendment rights. The district court granted the petition, finding that the detainee was entitled to an individualized determination of his detention pending resolution of removal proceedings against him. (Federal District Court, Eastern District, Michigan)

U.S. District Court
PAROLE

U.S. Ex Rel. Moore v. Conner, 284 F.Supp.2d 1092 (N.D.Ill. 2003). A federal prisoner filed a petition for a writ of habeas corpus, challenging the revocation of his parole based on his alleged use of drugs, commission of murder, and possession of a firearm. The district court denied the petition, finding that the prisoner was not prejudiced by a delay in his parole revocation hearing,

and that he was not entitled to receive federal sentence credit and good time credit for time he spent in state custody. (U.S. District Court, Northern District, Illinois)

U.S. District Court
PRIVATE OPERATOR

U.S. v. Rios-Flores, 318 F.Supp.2d 452 (W.D.Tex. 2003). An inmate in a privately owned and operated jail moved to dismiss an indictment against him for possession of a prohibited item in a federal prison. The district court granted the motion, finding that the state-contracted correctional facility, which contained mostly federal prisoners and detainees but which also contained county prisoners, was not a "federal penal facility" within the meaning of a statute prohibiting possession of a prohibited item in a federal prison. (Val Verde Correctional Facility, Texas)

U.S. Appeals Court
SEX OFFENDER
CIVIL COMMITMENT

Williams v. Meyer, 346 F.3d 607 (6th Cir. 2003). A state prisoner who was committed under Michigan's Criminal Sexual Psychopath Act sought habeas relief. The district court denied the petition and the prisoner appealed. The appeals court reversed, vacated and remanded. The appeals court held that the prisoner's claim that it was more difficult to obtain release under the Act than under Michigan's Mental Health Code could warrant habeas relief, if the state's reasons for such differences were not compelling. The prisoner alleged that the Act's discharge provision did not necessarily require proof of likelihood of a prisoner's future dangerousness for continued commitment, in violation of due process. (Michigan)

U.S. Appeals Court
PAROLE

Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003). A parolee brought a § 1983 action challenging a ban on international travel, alleging it violated his right to travel and to marry. The district court dismissed the case for failure to state a claim and the parolee appealed. The appeals court affirmed, finding that the parole condition that absolutely barred parolees from traveling internationally throughout the term of their parole, did not violate any constitutionally-protected right to travel or to marry that the parolee possessed. (Wisconsin Department of Justice)

2004

U.S. District Court
PAROLE

Ash v. Reilly, 354 F.Supp.2d 1 (D.D.C. 2004). A prisoner petitioned for a writ of habeas corpus, challenging his detention on the basis that his rights were violated at his parole revocation hearing. The district court granted the petition, finding that the prisoner's constitutional right to confrontation of adverse witnesses was violated the hearing. According to the court, the right to confront adverse witnesses, as a minimum requirement of due process in a parole revocation, is found in the Confrontation Clause of the Sixth Amendment. The court noted that the revocation was based solely on the hearsay evidence of a police officer and police report, which was also based on hearsay evidence. (Lee U.S. Penitentiary, Virginia)

U.S. Appeals Court
DUE PROCESS
GOOD TIME

Brown v. Braxton, 373 F.3d 501 (4th Cir. 2004). A prisoner petitioned for federal habeas corpus relief from the loss of good time credits in a prison disciplinary hearing. The district court denied relief and the prisoner appealed. The appeals court affirmed, finding that the prison disciplinary hearing officer's refusal to allow the prisoner to call a fellow inmate as a live witness at a hearing was not contrary to, or an unreasonable application of clearly established federal law on the due process rights of inmates. The court noted that an inmate has a qualified right to call witnesses and present documentary evidence in his defense, but only when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. (Red Onion State Prison, Virginia)

U.S. District Court
PLRA-Prison Litigation
Reform Act

Colton v. Ashcroft, 299 F.Supp.2d 681 (E.D.Ky. 2004). A federal prisoner filed a petition for habeas corpus relief alleging that the federal Bureau of Prison's new regulation, which would delay his release to a halfway house until only ten percent of his sentence remained, violated the notice and comment provisions of the Administrative Procedures Act (APA). The district court granted the prisoner's motion for a preliminary injunction. The court held that the Prison Litigation Reform Act's (PLRA) exhaustion requirements did not apply to a habeas petition. The court noted that the public interest would be served by the grant of an injunction and that the prisoner would be irreparably harmed in the absence of an injunction. The court ordered the prisoner to be immediately transferred to a halfway house without regard to the new regulation. (FMC-Lexington, Kentucky, Federal Bureau of Prisons)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Gamble v. Calbone, 375 F.3d 1021 (10th Cir. 2004). State inmates brought separate pro se actions for federal habeas corpus relief, each alleging that prison officials violated his due process rights by revoking earned credits in prison disciplinary hearings for a criminal act that he did not commit. The district court denied the petitions and the inmates appealed. The appeals court reversed and remanded, finding that the inmates were entitled to habeas relief on the grounds that revocation of their earned credits resulting from unsupported disciplinary convictions violated due process. (Great Plains Correctional Facility, Oklahoma)

U.S. Appeals Court
GOOD TIME

Glascow v. U.S., 358 F.3d 967 (D.C.Cir. 2004). Prisoners who were serving indeterminate sentences of at least 15 years to life petitioned for habeas relief seeking the deduction of good time credits from their maximum sentences of life imprisonment. The district court denied the petition and the prisoners appealed. The appeals court affirmed, finding that life sentences were indeterminate and were therefore not capable of reduction in accordance with the pertinent statute. The court began its decision by asking "Precisely how long is an individual's life span

minus, say, five years and 10 days? One cannot give a firm answer if the person is still alive."
(District of Columbia)

- U.S. Appeals Court
ALIEN
- Gonzalez v. O'Connell, 355 F.3d 1010 (7th Cir. 2004). An alien petitioned for habeas corpus relief, alleging that a mandatory detention requirement was unconstitutional as applied to him. The district court granted the petition and the Immigration and Naturalization Service (INS) appealed. The appeals court reversed, finding that mandatory detention pending removal did not violate due process as applied to an alien who had a good-faith challenge to his deportability. (Circuit Court of Cook County, Illinois)
- U.S. District Court
CREDIT FOR TIME
SERVED
- Hughes v. Slade, 347 F.Supp.2d 821 (C.D.Cal. 2004). A prisoner convicted for attempted extortion petitioned for habeas corpus relief, challenging the denial of sentence credit for time served in a Mexican jail while awaiting extradition to the United States. The district court granted the petition, finding that the prisoner was entitled to credit for time served in the Mexican jail. The court held that the prisoner was not required to have been exclusively in on federal charges relating to his sentence for extortion in order to be eligible for sentence credit. (Federal Correctional Institute, Victorville, California)
- U.S. District Court
GOOD TIME
- Jackson v. Ashcroft, 347 F.Supp.2d 924 (D.Or. 2004). A federal prisoner petitioned for a writ of habeas corpus, challenging the federal Bureau of Prisons' (BOP) computation of his good-time credits. The district court denied the petition, finding that the BOP regulation that used the amount of time actually served by the prisoner as the basis for prorating good-time credits, rather than the sentence imposed, was a reasonable interpretation of the statute governing the allocation of good-time credits. (Federal Bureau of Prisons, Oregon)
- U.S. District Court
MEDICAL CARE
- Kane v. Winn, 319 F.Supp.2d 162 (D.Mass. 2004). A federal prisoner filed a petition for habeas corpus relief, alleging that prison staff improperly denied him proper medical care in violation of the federal Bureau of Prisons (BOP) regulations and the constitution. The district court denied the defendants' motions for summary judgment, and granted the inmate's motion for appointment of counsel. The court held that although habeas corpus was not the proper form of action for the prisoner's claims, it would treat the habeas petition as if it were a properly filed § 1983 or Bivens claim. The court noted that international law creates an independent source of obligation to provide to prisoners at least those protections that the Eighth Amendment provides. (Federal Medical Center-Devens, Massachusetts)
- U.S. District Court
TRANSFER
- Laws v. Barron, 348 F.Supp.2d 795 (E.D.Ky. 2004). A federal prisoner petitioned for a writ of habeas corpus challenging the determination of the federal Bureau of Prisons that he was ineligible to enter a residential drug abuse treatment program. The district court dismissed the prisoner's petition. The court held that the Bureau's determination that the prisoner was ineligible on the ground that he only used, but did not abuse, alcohol within the 12 months prior to his incarceration, was not contrary to well-settled case law. (Federal Correctional Institution, Manchester, Kentucky)
- U.S. Appeals Court
TRANSFER
- Overturf v. Massie, 385 F.3d 1276 (10th Cir. 2004). State prison inmates who had been transferred from Hawaii to a privately owned correctional facility in another state sought federal habeas relief, alleging they should have been transferred when the private facility was purchased by the state. The district court dismissed the action, finding that inmates have no protected liberty interest in the location of their confinement. The court also held that the transferor state did not lose jurisdiction over the inmates, and that the original transfer did not constitute "banishment" in violation of the Eighth Amendment. (Dominion Correction Services, Oklahoma)
- U.S. District Court
ALIEN
- Oyedeji v. Ashcroft, 332 F.Supp.2d 747 (M.D.Pa. 2004). An alien who had been imprisoned for more than four years while challenging a removal order petitioned for habeas relief. The district court granted the petition. The court held that the alien's prior convictions, more than seven years earlier, of alleged shoplifting offenses and his prior failure to appear in connection with criminal proceedings did not establish either a risk of flight or a danger to the community that would support the alien's continued detention. The court noted that the alien had never been afforded any opportunity to explain, nor had any inquiry been made as to the circumstances surrounding the issuance of bench warrants, and that the alien was denied relief based solely on the reading of his file. (U.S. Department of Justice, Pennsylvania)
- U.S. District Court
DISCIPLINE
GOOD TIME
- Pizarro Calderon v. Chavez, 327 F.Supp.2d 131 (D.Puerto Rico 2004). A federal prisoner sought a writ of habeas corpus, challenging the refusal of the federal Bureau of Prisons to reduce his sentence and loss of good time credits as the result of a prison disciplinary determination. The district court denied the prisoner's petition. The court held that the Bureau's decision not to reduce the prisoner's sentence upon his completion of a substance abuse program did not violate due process. The court also found that the prisoner was not prejudiced by any violation of his due process rights when he was not allowed to call a physician as a witness at his disciplinary hearing. The court noted that a prisoner has no absolute right to call live witnesses at a disciplinary hearing and that prison officials have wide discretion to refuse to call witnesses who are irrelevant, unnecessary, or who pose a security concern. The court cautioned that a prison policy would not withstand due process scrutiny if the prison employed a blanket ban on calling

witnesses other than staff, rather than evaluating requests on a case-by-case basis. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. District Court
GOOD TIME

Sash v. Zenk, 344 F.Supp.2d 376 (E.D.N.Y. 2004). A federal prisoner petitioned for habeas relief alleging that the federal Bureau of Prisons (BOP) had improperly applied a federal statute that governed calculation of good time credits. The district court denied the petition, finding that the calculation of good time credits based on time served, as opposed to the sentence imposed, was a reasonable interpretation of the statute that permitted an inmate to earn up to 54 days of good time credit per year. (Federal Bureau of Prisons, New York)

U.S. District Court
TRANSFER

Scott v. Federal Bureau of Prisons, 317 F.Supp.2d 529 (D.N.J. 2004). A prisoner who had filed a habeas corpus petition filed a motion for injunctive relief to compel the federal Bureau of Prisons (BOP) to make a determination of his eligibility for release to a community corrections center (CCC) pursuant to a former BOP policy. The district court granted injunctive relief, finding that the prisoner was denied due process by a Justice Department's Office of Legal Counsel memo, which misinterpreted the law, thereby unlawfully restricting the BOP's discretion in determining how a prisoner's level of custody was to be implemented. (Federal Corr'l Center, Fort Dix, N.J.)

U.S. District Court
DISCIPLINE

Thomas v. McBride, 306 F.Supp.2d 855 (N.D.Ind. 2004). A state prison inmate brought a habeas proceeding to challenge a finding of guilt at a prison disciplinary hearing. The district court denied habeas relief. The court held that the prison disciplinary board adequately explained its reasons for refusing to allow the inmate to call a witness, and that the board's finding of guilt was supported by some evidence. The court found that the inmate was not denied due process because he was not given an opportunity to review documentary evidence used to support the finding of guilt, and that the board's explanation satisfied the minimum requirements of due process. (Maximum Control Facility, Westville, Indiana)

U.S. District Court
SEGREGATION
PLRA-Prison Litigation
Reform Act

U.S. v. Catalan-Roman, 329 F.Supp.2d 240 (D.Puerto Rico 2004). Two pretrial detainees filed a motion contesting their placement in administrative segregation after they were certified as being death-penalty eligible. The district court granted their motion, finding that death certification did not justify their automatic placement in administrative detention. The court noted that the detainees had resided in the general prison population without incident for over one year before being death-certified, there was no evidence that death-certified detainees were more likely to be disruptive or to take hostages, and their placement in administrative segregation eliminated their ability to establish mitigating evidence relative to their character and adjustment to life in prison. (Metropolitan Detention Center-Guaynabo, Puerto Rico)

2005

U.S. District Court
DEATH PENALTY
AEDPA- Antiterrorism
and Effective Death
Penalty Act

Bell v. True, 356 F.Supp.2d 613 (W.D.Va. 2005). A state prisoner sentenced to death for murder gave notice that he intended to file a petition for a writ of habeas corpus. After his execution was stayed, the state moved to require the prisoner to file his petition within thirty days. The district court held that the inmate was not guaranteed one full year in which to file his federal habeas petition, and ordered the inmate to file within 30 days. According to the court, the Antiterrorism and Effective Death Penalty Act (AEDPA) allowed the court to order the petition to be filed within a reasonable time. (Sussex I State Prison, Virginia)

U.S. Appeals Court
SENTENCE
DUE PROCESS

Bonebrake v. Norris, 417 F.3d 938 (8th Cir. 2005). An offender appealed her state conviction of possession of a controlled substance with the intent to deliver. The federal court granted her habeas corpus petition. The state appealed and the appeals court reversed. The court held that the state's four-year delay in incarcerating the offender did not amount to a waiver of incarceration under the Due Process Clause. The district attorney's office and law enforcement personnel took no steps to take the offender into custody after the state appellate court affirmed her conviction and sentence, and the prisoner was not in hiding. (Yell County Jail, Arkansas)

U.S. Appeals Court
PAROLE

Boutwell v. Keating, 399 F.3d 1203 (10th Cir. 2005). A state inmate brought an action under § 1983 or alternately for habeas corpus relief, challenging the denial of his placement into a state's pre-parole conditional supervision program. The district court dismissed the action and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate did not have a due process liberty interest in participating in the program. The court found that state law did not create a due process-protected liberty interest based on the expectation of release. The court noted that state law did not place any limitations on the factors that the corrections department could consider in deciding whether to recommend an inmate for placement in the program. (Harp Correctional Center, Oklahoma)

U.S. Appeals Court
GOOD TIME

Brown v. McFadden, 416 F.3d 1271 (11th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus based on an alleged error in the calculation of his good conduct time (GCT). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that it would defer to the regulation promulgated by the federal Bureau of Prisons that

interpreted the phrase “term of imprisonment” to mean actual time served rather than the sentence imposed. (Federal Bureau of Prisons, Georgia)

U.S. Appeals Court
CIVIL COMMITMENT
DUE PROCESS
SEX OFFENDER

Carty v. Nelson, 426 F.3d 1064 (9th Cir. 2005). A petitioner was serving his first two-year civil commitment as a sexually violent predator (SVP) when his civil commitment was affirmed on direct appeal. The petitioner sought habeas corpus relief. The district court denied the petition because the state’s second recommitment petition was pending. The petitioner was released when the second state recommitment petition was denied and he was ordered unconditionally released. The district court held that the release of the petitioner from SVP commitment did not render the petition moot. The court found that the petitioner did not have Sixth Amendment confrontation rights in a civil commitment proceeding, and that the use of documentary evidence from a probation report, in lieu of live testimony, did not violate due process. (Wisconsin)

U.S. District Court
PAROLE

Collins v. Hendrickson, 371 F.Supp.2d 1326 (M.D.Fla. 2005). A prisoner filed a petition for a writ of habeas corpus appealing the revocation of his control release supervision. The district court granted the petition, finding that the state parole commission violated the prisoner’s Fourteenth Amendment due process rights. The court found that the commission effectively rejected a parole examiner’s factual findings regarding a domestic battery incident and substituted its own findings, even though the examiner’s findings were supported by competent, substantial evidence. (Florida Parole Commission)

U.S. Appeals Court
PAROLE

Jackson v. Jamrog, 411 F.3d 615 (6th Cir. 2005). A state prisoner filed a petition for a writ of habeas corpus challenging the constitutionality of a Michigan statute that permits prosecutors and crime victims to appeal decisions to grant parole, but which provides no equivalent right of appeal to state prisoners who are denied parole. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that differentiating between prisoners and non-prisoners had a rational basis and the statute was rationally related to the legitimate state goal of eliminating frivolous prisoner lawsuits. The court noted that prisoner claims had inundated the judicial system in a manner that non-prisoner claims had not. (Michigan)

U.S. Appeals Court
ACCESS TO COURTS

Marquard v. Secretary for Dept. of Corrections, 429 F.3d 1278 (11th Cir. 2005). After his convictions for first-degree murder and armed robbery were affirmed and he was sentenced to death, a prisoner sought habeas corpus relief. The district court denied relief and the prisoner appealed. The appeals court affirmed. The court held that the prisoner’s due process claim based on his shackling during the penalty phase of the capital murder trial was procedurally barred, and that the prisoner’s attorney did not provide ineffective counsel by failing to object to the shackling. (U.S. District Court for the Middle District of Florida)

U.S. Appeals Court
ALIEN

Morales-Fernandez v. I.N.S., 418 F.3d 1116 (10th Cir. 2005). An inadmissible alien who was detained in a federal correctional institution following a final order of removal filed a pro se habeas corpus petition. The district court denied the petition and the alien appealed. The appeals court reversed and remanded, finding that the district court plainly erred by denying the petition, where the alien had been detained well beyond six months following the final removal order. The court noted that removal was not reasonably foreseeable. (Federal Correctional Institution, Florence, Colorado)

U.S. Appeals Court
GOOD TIME

Moreland v. Federal Bureau of Prisons, 431 F.3d 180 (5th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus on the theory that her good time credits had been improperly calculated. The district court granted the petition and the Federal Bureau of Prisons (BOP) appealed. The appeals court reversed and remanded. The court held that the phrase “term of imprisonment” as used in the statute that permits a federal prisoner to earn up to 54 days of good time credit at the end of each year of imprisonment, unambiguously referred to the actual time served in prison, not to the sentence imposed. The court found that the BOP had properly awarded credit only for each year served. (Federal Prison Camp, Bryan, Texas)

U.S. District Court
TRANSFER

Moss v. Apker, 376 F.Supp.2d 416 (S.D.N.Y. 2005). A prisoner brought a habeas corpus action to challenge the application of the federal Bureau of Prisons (BOP) policy that categorically restricted prisoner transfers to community corrections centers (CCCs) to the last ten percent of their sentences, not to exceed six months. The district court denied the petition. The court held that the challenge to an earlier version of the policy was mooted, and that the new policy complied with the notice and comment rulemaking requirements of the Administrative Procedures Act (APA). The court found that the BOP reasonably interpreted the statutes as giving it discretion to limit transfers to a statutory minimum period. The court found that the retroactive application of the policy did not violate the Ex Post Facto Clause. (Federal Correctional Institution, Otisville, New York)

U.S. Appeals Court
GOOD TIME

Mujahid v. Daniels, 413 F.3d 991 (9th Cir. 2005). A federal prisoner filed a petition for a writ of habeas corpus, challenging the calculation of his good time credit by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court

affirmed. The court held that it would defer to the BOP's interpretation of the good time credit statute, which interpreted the ambiguous phrase "term of imprisonment" to mean actual time served. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
RELEASE DATE

Paulsen v. Daniels, 413 F.3d 999 (9th Cir. 2005). Federal prisoners brought petitions for habeas relief, challenging the decision of the federal Bureau of Prisons (BOP) to exclude prisoners, whose crime of conviction involved firearms, from eligibility for early release following completion of drug treatment. The district court granted the petitions and the government appealed. The court of appeals reversed in part, finding that the BOP could only apply the restriction prospectively. After several more proceedings the case was again before the appeals court. The court held that the BOP violated the Administrative Procedures Act (APA) when it adopted an interim rule and that the prisoners suffered injuries in fact by the BOP's adoption of the interim rule. The court found that the BOP adopted the rule that excluded the prisoners from eligibility without first publishing a notice of the proposed rule-making, without providing a period for comment on the rule before adoption, and that the BOP did not publish the adopted rule before its effective date. The court found that the BOP's violation of APA was not harmless and that the rule was invalid. The court noted that the BOP had adopted the interim rule because federal circuit courts of appeal had not agreed on the constitutionality of the previous rule. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
GOOD TIME

Perez-Olivo v. Chavez, 394 F.3d 45 (1st Cir. 2005). A federal prisoner challenged the calculation of his good time credit by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that Congress implicitly delegated authority to interpret the ambiguous phrase "term of imprisonment" to the BOP and that the prisoner was not entitled to good time credit based on his entire 10-year sentence, but rather to 54 days for each full year actually served. (Metropolitan Det. Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
GOOD TIME CREDIT

Petty v. Stine, 424 F.3d 509 (6th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus challenging the manner in which the Bureau of Prisons calculated his good time credit. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed, finding that the Bureau reasonably interpreted the statute by awarding good time based on the actual time served by the prisoner, not based on the sentence imposed. (Federal Bureau of Prisons, Kentucky)

U.S. District Court
TRANSFER

Pimentel v. Gonzales, 367 F.Supp.2d 365 (E.D.N.Y. 2005). A prisoner brought a pro-se petition for a writ of habeas corpus challenging a federal Bureau of Prisons (BOP) policy that limited his transfer to a Community Corrections Center, to the lesser of six months or the last ten percent of a prisoner's sentence. The district court granted the petition, finding that the BOP's policy was not an appropriate exercise of its discretion under the enabling statute that provided specific factors relevant to such placements. (Federal Bureau of Prisons, New York)

U.S. Appeals Court
GOOD TIME

Sample v. Morrison, 406 F.3d 310 (5th Cir. 2005). A federal prisoner filed a habeas corpus petition asserting that the Bureau of Prisons (BOP) was calculating his good time credit in a manner that was contrary to the federal prisoner release statute. The district court denied relief and the prisoner appealed. The appeals court dismissed for lack of subject matter jurisdiction. The appeals court held that the petition was not ripe for judicial review and that in any event, the BOP's interpretation of the statute was entitled to *Chevron* deference. The court held that the phrase "term of imprisonment" in the statute that permitted a federal prisoner to earn up to 54 days of good time credit at the end of each year of the prisoner's term of imprisonment was ambiguous, in that it could mean either the sentence imposed or the actual time served in prison. The court accorded deference to the BOP interpretation, which awarded credit for each year served in prison. (Federal Bureau of Prisons, Texas)

U.S. Appeals Court
GOOD TIME CREDIT

Sash v. Zenk, 428 F.3d 132 (2nd Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus challenging the manner in which the Bureau of Prisons calculated his good time credit. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed, finding that the Bureau reasonably interpreted the statute by awarding good time based on the actual time served by the prisoner, not based on the sentence imposed. (Federal Bureau of Prisons, New York)

U.S. District Court
HABEAS CORPUS
RELIEF

Thomas v. Barker, 371 F.Supp.2d 636 (M.D.Pa. 2005). A jail inmate brought a pro se civil rights suit seeking to challenge the propriety of charges of escape and other crimes. The district court dismissed the case, finding that the inmate could not seek release from custody in a § 1983 action. The court noted that to the extent that the jail inmate was challenging the fact or duration of his confinement by attacking a sheriff's filing of charges against him, the claims had to be brought in a habeas corpus petition, rather than a civil rights action. The court also held that any claim for monetary damages based on a civil rights claim for allegedly unconstitutional imprisonment based on vindictive prosecution would not accrue in the inmate's favor under the *Heck* rule until such time as the charges were dismissed or convictions were reversed on direct appeal, expunged

by a state tribunal, or called into question by the issuance of a federal writ of habeas corpus. The court found that the claims were legally frivolous and subject to dismissal under the Prison Litigation Reform Act (PLRA). (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
PAROLE

Thomas v. Pennsylvania, 375 F.Supp.2d 406 (M.D.Pa. 2005). A prisoner brought a civil rights suit seeking damages and challenging revocation of his parole that resulted in his having to serve back time. The district court dismissed the case, finding that it was legally frivolous for the purposes of dismissal under the provisions of the Prison Litigation Reform Act (PLRA.) The court held that the prisoner was required to bring a habeas corpus petition to the extent that he challenged the fact or duration of his confinement. (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
SEGREGATION
PRETRIAL DETAINEE

U.S. v. Basciano, 369 F.Supp.2d 344 (E.D.N.Y. 2005). A purported crime boss who was being held as a pretrial detainee petitioned for a writ of habeas corpus, challenging his detention in a restrictive special housing unit. The district court granted the petition, finding that indefinite solitary confinement of the detainee was not reasonably related to the government's legitimate objective of preventing the detainee from allegedly planning or approving violent criminal conduct while behind bars. The court held that to justify such "harsh" detention, more substantial proof was required that the detainee committed or directed the crime of murder in aid of racketeering while in detention, or had conspired with another inmate to murder a federal prosecutor. According to the court, the security restrictions placed obstacles on the detainee's communications with his attorneys, which was especially important because the detainee was charged with a crime for which he could receive the death penalty. (Federal Bureau of Prisons, Metropolitan Correctional Center, Manhattan, New York)

U.S. District Court
TRANSFER
SENTENCE

U.S. v. Paige, 369 F.Supp.2d 1257 (D.Mont. 2005). A federal prisoner filed a habeas petition challenging the Bureau of Prisons (BOP) policy that precluded his placement in a community corrections center, as recommended by the sentencing court. The district court granted the petition, finding that the prisoner was not required to first exhaust his administrative remedies before the court could consider the petition, because by the time the inmate exhausted every available administrative remedy he would nearly be done serving his entire sentence. The court held that the statutes governing placement of inmates in prerelease custody did not authorize the BOP policy, under which inmates were designated to a community corrections center only for the lesser of six months or ten percent of their sentence. The court ordered the BOP to consider the appropriateness of transferring the inmate to a community confinement center. (Federal Correctional Center, Florence, Colorado)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Wilson v. Jones, 430 F.3d 1113 (10th Cir. 2005). A state inmate petitioned for a writ of habeas corpus, challenging on due process grounds a misconduct conviction that caused him to be demoted to a non-credit-earning prisoner. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, ordering the issuance of a writ on remand. The court held that the misconduct conviction reduced the inmate's credit-earning class in a manner that inevitably affected the direction of his sentence and therefore deprived the inmate of a liberty interest. According to the court, officials violated the inmate's due process rights by convicting him without any evidence. (Great Plains Correctional Facility, Oklahoma)

U.S. Appeals Court
GOOD TIME

Yi v. Federal Bureau of Prisons, 412 F.3d 526 (4th Cir. 2005). A federal prisoner petitioned for a writ of habeas corpus, contending that he was entitled to more good time credit (GTC) than awarded by the federal Bureau of Prisons (BOP). The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the phrase "term of imprisonment" in the statute was ambiguous and that the court would defer to the BOP's statutory interpretation. (Federal Correctional Institution, Petersburg, Virginia)

2006

U.S. District Court
ACCESS TO COURTS
ALIEN

Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). In a habeas case, the petitioner, who was detained at the United States Naval Base in Guantanamo Bay, Cuba, filed a motion to hold federal respondents in contempt of a protective order governing access to counsel for Guantanamo detainees and a motion to expedite his access to counsel. The district court held that the protective order did not require evidence of authority to represent a detainee as a prerequisite to counsel meeting with a detainee, but rather, the protective order provided that counsel who purportedly represented a particular detainee provide evidence of their authority to represent that detainee within 10 days of counsel's second visit with the detainee. (United States at the Naval Base, Guantanamo Bay, Cuba)

U.S. Appeals Court
CIVIL COMMITMENT

Armstrong v. Guccione, 470 F.3d 89 (2nd Cir. 2006). A prisoner incarcerated for civil contempt for refusing to comply with an order, sought habeas corpus relief. The district court denied the prisoner's motion for bail and the prisoner appealed. The appeals court affirmed, remanded, and ordered the case to be reassigned. The court held that the Non-Detention Act did not eliminate

the lower courts' inherent power to order coercive civil confinement, and implicitly authorized coercive confinement in the face of civil contempt. The court found that civil confinement only becomes punitive, for the purposes of a due process analysis, when it loses the ability to secure compliance. The court held that a seven-year length of imprisonment for refusing to produce corporate records and property, so as to comply with an order issued in a civil securities fraud action, did not violate the prisoner's due process rights, where the property in question had a "life-altering" value of \$15 million, such that his refusal to comply indicated that he was willing to suffer jail time in hopes of ending up in possession of the property. The court opened its opinion with the following statement: "*It has been said that a civil contemnor who is incarcerated to compel compliance with a court order holds the key to his prison cell: Where defiance leads to the contemnor's incarceration, compliance is his salvation.*" (Metropolitan Correctional Center, Federal Bureau of Prisons, New York)

U.S. District Court
PAROLE

Ash v. Reilly, 433 F.Supp.2d 37 (D.D.C. 2006). A District of Columbia prisoner petitioned for a writ of habeas corpus, challenging his detention on the ground that his rights were violated at his parole revocation hearing. The district court granted relief and subsequently denied reconsideration. On appeal, the decision was vacated and remanded. On remand, the district court granted the prisoner's petition, finding that: (1) unsworn verbal allegations of four or five unidentified individuals who purportedly identified the parolee as the attacker in an assault were not reliable hearsay statements; (2) refusal to allow the parolee to exercise his confrontation rights violated due process; and (3) the parolee did not waive his right to confrontation. The court noted that when hearsay is used to support a decision to revoke parole, there must be some independent basis for believing the hearsay to be true. (United States Parole Commission)

U.S. District Court
SEGREGATION
PROGRAMS

Barq v. Daniels, 428 F.Supp.2d 1147 (D.Or. 2006). A federal prisoner filed a petition for a writ of habeas corpus, alleging that his removal from his originally assigned class under the Bureau of Prisons' (BOP) drug and alcohol treatment program (DAP), and subsequent placement into another class that graduated on a later date violated his constitutional rights. The district court held that it was arbitrary and capricious and an abuse of discretion for BOP to rely exclusively on the number of sessions that it forced the petitioner to miss in deciding to remove the prisoner from his original DAP class. The prisoner had been placed in a special housing unit (SHU) through no fault of his own, and he missed classes as a result. The court noted that had the prisoner been permitted to rejoin his class, as of graduation he would have completed more sessions than seventy-five percent of the other DAP participants. (FCI Sheridan, Oregon)

U.S. District Court
PAROLE

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Corr'l Institution, Houtzdale, Pennsylvania)

U.S. District Court
GOOD TIME

Gaskins v. Johnson, 443 F.Supp.2d 800 (E.D.Va. 2006). A state inmate, proceeding pro se, filed a petition for a writ of habeas corpus challenging the denial of good conduct credits. The district court dismissed the petition. The court held that the appropriate remedy for the inmate's challenge to the denial of good conduct credits was an action pursuant to § 1983, not a petition for a writ of habeas corpus. The court found that the inmate did not have a protected liberty interest in either maintaining a current classification or obtaining a new classification, as required to prevail on a § 1983 claim. (Powhatan Correctional Center, Virginia)

U.S. Appeals Court
DISCIPLINE

Grossman v. Bruce, 447 F.3d 801 (10th Cir. 2006). A pro se prisoner filed a habeas petition, challenging his sentence for a disciplinary conviction in a prison administrative hearing. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the due process error in denying the prisoner's request to call a corrections officer to testify at a hearing was harmless where the officer's testimony would have supported another officer's report of the riot incident, so that the testimony would not have aided prisoner's defense. The court found that no liberty interest was implicated when prison officials punished the prisoner for possession of less dangerous contraband by imposing seven days of segregation and 30 days of restriction time following a disciplinary hearing, and thus, the prisoner's due process rights were not violated, absent a showing that the prisoner lost any good-time credits, or that the segregation or restriction time imposed caused an atypical or significant hardship. (Hutchinson Correctional Facility, Kansas)

- U.S. District Court
CREDIT FOR TIME
SERVED
- J.P.C. (JUV) v. U.S.*, 430 F.Supp.2d 961 (D.S.D. 2006). A juvenile petitioned for a writ of habeas corpus, seeking credit, which the federal Bureau of Prisons (BOP) had refused to award him, for days spent in custody at age 19 prior to revocation of his probation. The district court held that the juvenile was entitled to credit for time spent in custody awaiting a dispositional hearing that resulted in revocation of his release and commencement of official detention. The court noted that no deference was due to the revised Bureau of Prisons policy of no longer granting credit to juveniles for pretrial or pre-hearing custody, where the change in policy was based on one district court decision from another jurisdiction, the policy was made without notice to the Judicial Conference, and was not founded on statutes, comments, or independent setting of policy. The plaintiff was a juvenile when he was placed on probation until age 21. He violated his conditions of probation and was taken into custody at age 19 by order of the court. He was held in a county jail (with adult offenders) until his dispositional hearing. (South Dakota)
- U.S. Appeals Court
DISCIPLINE
GOOD TIME
- Johnson v. Finnan*, 467 F.3d 693 (7th Cir. 2006). A state prison inmate sought federal habeas relief after a prison disciplinary board had imposed discipline, consisting of revocation of 30 days' good-time credit, for a lockdown infraction. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, finding that the district court should have held an evidentiary hearing, given the inmate's sworn testimony and extrinsic evidence that contradicted the disciplinary board's version of events. The inmate had asserted that he had unsuccessfully sought a continuance before the prison disciplinary board in order to obtain additional evidence, including a surveillance videotape, that would contradict the accuser's version of events. The court noted that a prison disciplinary board is entitled to resolve conflicts in the stories presented to it, in deciding to impose revocation of good-time credits as discipline, as long as some evidence supports the decision; however, the board is not entitled to prevent an inmate from offering material evidence. (Indiana Department of Corrections)
- U.S. District Court
ACCESS TO COURTS
- Navarro v. Adams*, 419 F.Supp.2d 1196 (C.D.Cal. 2006). A state prisoner filed a pro se petition for a writ of habeas corpus, challenging his state court conviction and his sentence for first degree murder. The district court held that a deputy sheriff's search of his cell and seizure of attorney-client privileged documents did not warrant federal habeas relief because it did not substantially prejudice the prisoner's Sixth Amendment right to counsel. The court noted that the prisoner's cell was searched to locate evidence regarding gang activity and threats to witnesses, not to interfere with his relationship with his defense counsel, and the information seized was turned over to the trial court for an in-camera review without being viewed by any member of the prosecution team. (California)
- U.S. District Court
DUE PROCESS
- Nguyen v. B.I. Inc.*, 435 F.Supp.2d 1109 (D.Or. 2006). Aliens from Cuba and Vietnam, who had final orders of removal and had been released from custody on general orders of supervision, but who had violated their orders by committing crimes, petitioned for a writ of habeas corpus challenging the validity of the Department of Homeland Security's (DHS) Intensive Supervision Appearance Program (ISAP). The district court denied the petition, holding that: (1) ISAP regulations requiring participating aliens to remain in their residences between eight and 12 hours per day was not "detention" outside the statutory authority of Immigration and Customs Enforcement (ICE); (2) ISAP requirements did not violate the aliens' liberty interests under the Fifth Amendment; (3) placement of the aliens in ISAP did not violate their procedural due process rights; and (4) ISAP was not subject to Administrative Procedure Act (APA) requirements. (Department of Homeland Security (DHS)'s Intensive Supervision Appearance Program, Oregon)
- U.S. District Court
DISCIPLINE
SEGREGATION
- Nicholson v. Carroll*, 458 F.Supp.2d 249 (D.Del. 2006). A state prisoner filed a petition for writ of habeas corpus, challenging the constitutionality of a disciplinary hearing that resulted in the imposition of discipline in the form of administrative segregation. The district court denied the inmate's petition, finding that the claim that he was denied an impartial disciplinary hearing, as guaranteed by the due process clause, was not cognizable on habeas review, where the disciplinary sanctions imposed against the prisoner did not involve any loss of good time credit, but only confinement to administrative segregation for 15 days. (Delaware Correctional Institution)
- U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
- Rose v. Mayberg*, 454 F.3d 958 (9th Cir. 2006). A sex offender who had been civilly committed to a state hospital as a sexually violent predator (SVP), filed a petition for a writ of habeas corpus after exhausting claims relevant to his petition in state court. The district court denied the petition and the offender appealed. The appeals court affirmed. The federal appeals court held that the decision by a state appellate court-- that due process did not require a jury in a civil commitment proceeding under the Sexually Violent Predator Act (SVPA) to determine if a sex offender was completely unable to control his behavior-- was not an objectively unreasonable application of the decisions of United States Supreme Court, and therefore the sex offender was not entitled to federal habeas relief. According to the court, only some showing of abnormality was required, that made it difficult, if not impossible, for a dangerous person to control his dangerous behavior. (California Department of Mental Health)

- U.S. District Court
DISCIPLINE
- Scruggs v. Jordon*, 435 F.Supp.2d 869 (N.D.Ind. 2006). A state prisoner sought federal habeas relief after he lost 120 days of good time credit as a sanction at a prison disciplinary proceeding. The district court denied the petition. The court held that prison officials did not violate due process in the prison disciplinary proceeding when they amended the original violation, and that due process did not require disqualification of the chairman of the state prison disciplinary board because the chairman was not directly involved in the investigation of the charges against the prisoner. According to the court, the board's refusal to allow the prisoner to present his walking cane as evidence did not violate due process, where the prisoner had not made a request to present physical evidence at the disciplinary hearing, and was allowed to present his version of the incident. The court also noted that due process did not require live testimony of corrections officers at a prison disciplinary hearing, absent a showing by the prisoner that their testimony would have been any different if given live, or that he was prejudiced by the absence of live testimony. (Westville Correctional Facility, Indiana)
- 2007**
- U.S. District Court
ACCESS TO COURTS
- Adams v. Bradshaw*, 484 F.Supp.2d 753 (N.D. Ohio 2007). After his convictions for aggravated murder and other offenses were affirmed, an offender sought a writ of habeas corpus. The district court held that, even if a due process violation occurred, the improper use of a stun belt placed on the defendant during trial was a harmless error because the evidence of guilt was overwhelming. The court noted that due process prohibits the use of shackles on a defendant during a criminal trial, unless there exists an essential state interest, such as the interest in courtroom security. (Trumbell County, Ohio)
- U.S. Appeals Court
HABEAS CORPUS
RELIEF
- Finch v. Miller*, 491 F.3d 424 (8th Cir. 2007). A prisoner convicted in state court of first-degree murder and sentenced to life in prison filed a second petition for habeas relief, which the district court dismissed. The prisoner appealed and the appeals court affirmed. The court held that the prisoner failed to establish that his lack of access to a state prison law library or legal assistance presented a sufficient impediment to toll the statutory period for filing a habeas petition. (Iowa)
- U.S. District Court
HABEAS CORPUS
RELIEF
- Hansley v. Ryan*, 482 F.Supp.2d 383 (D.Del. 2007). A state prisoner petitioned for a writ of habeas corpus, asserting that she had been held for more than 90 days at a higher level of incarceration than warranted for someone who was sentenced and waiting for bed space at a work-release location, and that she had not had a mental health evaluation while incarcerated. The district court dismissed. The court held that the prisoner's two claims would not alter her sentence or undo her conviction, and thus such claims did not state any issue cognizable on a federal habeas review. (Women's Work Release Treatment Center in New Castle, Delaware)
- U.S. Appeals Court
DISCIPLINE
- Howard v. U.S. Bureau of Prisons*, 487 F.3d 808 (10th Cir. 2007). A prisoner petitioned for habeas corpus relief, arguing that prison officials violated his due process rights during disciplinary proceedings. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the refusal of prison officials to allow the prisoner's witnesses to testify at his disciplinary hearing did not prejudice the prisoner, and thus did not violate his due process rights, where each witness submitted written statements, the witnesses provided a description of the fight underlying the disciplinary charge, and although the prisoner argued that one officer's statement was ambiguous, he did not demonstrate how further testimony would have aided his defense. But the court found that prison officials' refusal to produce and consider a videotape, which the prisoner contended would exonerate him as to the disciplinary charges, violated the prisoner's due process rights, where the officials offered no reason that producing the videotape would be hazardous to institutional safety. (U.S. Penitentiary, Florence, Colorado)
- U.S. District Court
ACCESS TO COURT
- Jordan v. Pugh*, 484 F.Supp.2d 1185 (D.Colo. 2007). A federal prisoner brought an action against prison officials challenging the constitutionality of a federal Bureau of Prisons (BOP) regulation prohibiting prisoners from acting as a reporter or publishing under a byline. The prisoner petitioned for permission to attend his trial in person and moved for reconsideration of a court order granting the defendants' motion to preclude the testimony of two witnesses who were also prisoners. The district court held that circumstances did not warrant granting the petition in light of the security risks associated with transferring the prisoner to lower security facility to facilitate participation in the trial. The court found that the proffered testimony of the other prisoners was not relevant. (United States Penitentiary, Florence, Colorado)
- U.S. District Court
DISCIPLINE
- Lutz v. Hemingway*, 476 F.Supp.2d 715 (E.D.Mich. 2007). A federal prisoner petitioned for a writ of habeas corpus, seeking relief from a disciplinary determination. The district court denied the petition. The court held that the inmate could not challenge the loss of telephone and commissary privileges in disciplinary proceedings by way of a habeas petition, where the loss had only a speculative or incidental effect on the length of his sentence. The court ruled that the inmate's loss of his prison job was a condition of confinement that could not be challenged in a habeas corpus proceeding. According to the court, a prison disciplinary board's determination that the inmate attempted to introduce non-hazardous contraband and made unauthorized use of the mail in violation of prison regulations was supported by some evidence, such that any right to due process that the prisoner had in the disciplinary proceeding that resulted only in his loss of privileges was satisfied. The court noted that the prison intercepted a letter written by the prisoner proposing a scheme to obtain tapes from outside by means of a fraudulent solicitation to a prison employee in a way that would conceal the inmate's involvement. (Federal Correctional Institution at Milan, Michigan)
- U.S. District Court
FRIVOLOUS PETITIONS
- Miles v. Angelone*, 483 F.Supp.2d 491 (E.D.Va. 2007). After his petition for a writ of habeas corpus was denied, a petitioner filed numerous unsuccessful motions for reconsideration. The district court reclassified the petitioner's twelfth such motion as a new and successive habeas petition and entered a separate order advising the petitioner that he should not file any additional motions for reconsideration or seek any additional review

absent a remand or allowance of a successive petition by the court of appeals. The court of appeals dismissed the petitioner's appeal and, in a separate order, affirmed the order advising the petitioner not to file additional motions. The petitioner then filed his seventeenth motion seeking reconsideration, which the court of appeals denied. The court held that the petitioner's history of filing frivolous and harassing pleadings supported a limited pre-filing injunction against the petitioner, noting that the successive and frivolous motions for reconsideration of dismissal of his original petition were a substantial burden on judicial resources. (Virginia)

U.S. District Court
DISCIPLINE
GOOD TIME

Moreno v. Buss, 523 F.Supp.2d 878 (N.D.Ind. 2007). After exhausting administrative remedies, a state prisoner submitted a petition for a writ of habeas corpus pertaining to demotion in his credit time earning classification at a prison disciplinary hearing. The court held that the prisoner had a procedural due process right, consistent with security considerations, to present a sweatshirt as exculpatory evidence for the Disciplinary Hearing Board's (DHB) consideration and that the DHB's review of investigative files containing photographs of the sweatshirt was not sufficient to satisfy the prisoner's due process rights because review of photographs would not have allowed the DHB to determine the nature of the stains on the sweatshirt, which was the point at issue. The inmate alleged that the sweatshirt was stained with paint, not blood. The court found that the DHB's error in failing to allow the prisoner to present the sweatshirt as exculpatory evidence was harmful. According to the court, there was no evidence to support the DHB's finding that the prisoner was guilty of battery. The court noted that it was not necessary for the sweatshirt to be physically present at the hearing, so long as the DHB examined it before making a decision. (Indiana State Prison)

U.S. Appeals Court
HABEAS CORPUS
RELIEF

Serrato v. Clark, 486 F.3d 560 (9th Cir. 2007). An inmate petitioned for a writ of habeas corpus and the district court denied the petition. The inmate appealed and the appeals court affirmed. The court held that the inmate suffered an injury in fact, as required for the inmate to have standing to bring a habeas petition challenging the decision of the Bureau of Prisons (BOP) to terminate his boot camp program, even though placement in boot camp was a discretionary decision made on an individual basis. The court noted that the decision denied the inmate the ability to be considered for a program that would have allowed her to serve only six months in prison. The court found that the decision of the BOP to terminate the boot camp program was committed to agency discretion by law, and thus was not susceptible to judicial review under the Administrative Procedure Act (APA). The inmate had only the recommendation by the judge that her eligibility for the discretionary program be evaluated and she had not earned any early release privileges when informed of the termination. (Federal Correctional Institution Dublin, California)

U.S. District Court
RELEASE DATE

West v. Whitehead, 484 F.Supp.2d 1011 (D.S.D. 2007). A federal prisoner filed petition for a writ of habeas corpus, challenging calculation by the federal Bureau of Prisons (BOP) of his release date. The district court denied the petition. The court held that the prisoner received credit against his Utah sentences for imprisonment which occurred prior to the date his federal sentence commenced, and, thus, any additional credit for time served on the Utah sentences would be a prohibited award of double credit for prior custody. (Federal Prison Camp, Yankton, South Dakota)

2008

U.S. Appeals Court
ACCESS TO COURT

Barnes v. Black, 544 F.3d 807 (7th Cir. 2008). A state prisoner petitioned for a writ of habeas corpus to order a prison warden to have him transported to the district court where his personal injury suit was pending. The district court denied the petition and denied the prisoner's request for a lawyer. The prisoner appealed. The appeals court dismissed the action. The court held that the district court's order denying the state prisoner's request for a lawyer to represent him in his personal injury lawsuit and in his habeas petition were non-final and therefore the appeals court did not have jurisdiction. (Wisconsin)

U.S. District Court
DUE PROCESS
PRETRIAL DETAINEE
SEGREGATION

Basciano v. Lindsay, 530 F.Supp.2d 435 (E.D.N.Y. 2008). A pretrial detainee petitioned for a writ of habeas corpus seeking an order lifting special administrative measures governing his confinement and releasing him from a special housing unit back into the general prison population. The district court denied the petition. The court held that the restrictive conditions of pretrial confinement which removed the detainee from the general prison population, did not amount to punishment without due process. The court noted that there was substantial evidence of the detainee's dangerousness, a rational connection between the conditions and a legitimate purpose of protecting potential victims, and the existence of an alternative means for the detainee to exercise his right to communicate with others and with counsel. (Metropolitan Detention Center, Brooklyn, New York)

U.S. Appeals Court
ALIEN
JURISDICTION
TRANSFER

Belbacha v. Bush, 520 F.3d 452 (D.C. Cir. 2008). An alien, who was an Algerian national, petitioned for a writ of habeas corpus to challenge his detention at Guantánamo Bay, Cuba, and moved for interim relief barring his transfer to Algeria based on the likelihood of torture by the Algerian government and a terrorist organization. The district court denied the motion and the alien filed a notice of appeal and simultaneously requested bar of his transfer. A motions panel temporarily enjoined his transfer to preserve appellate jurisdiction. The appeals court remanded the case to decide whether a preliminary injunction was necessary and appropriate. The court also found that federal courts can preserve jurisdiction pending Supreme Court review of the same jurisdictional issue in a different case. According to the court, the Military Commissions Act (MCA) did not displace the federal courts' remedial powers. (Guantánamo Bay, Cuba)

U.S. District Court
PAROLE

Brown v. McNeil, 591 F.Supp.2d 1245 (M.D.Fla. 2008). An inmate of the Florida penal system whose conditional release supervision had been revoked, filed a petition for a writ of habeas corpus. The district court granted summary judgment. The court held that the state court's decision to uphold revocation for failure to make supervision payments was unreasonable, and the state court's decision to uphold revocation based on violation of curfew provisions was unreasonable given that the inmate violated curfew only one time, and had been given

permission to violate curfew several times. According to the court, the state court's decision to uphold the parole commission's revocation of the inmate's conditional release supervision for failure to make \$30.00 per month cost of supervision payments and being \$312.41 in arrears, was based on an unreasonable determination of the facts in light of the evidence presented, and an unreasonable application of clearly established federal due process principles. The court noted that the state court's finding that the failure to pay costs was willful, substantial, and material, was incorrect by clear and convincing evidence, where testimony and evidence of record revealed that inmate did not have the ability to remain current with his supervision payments given his other financial obligations at the time. (Florida Parole Commission)

U.S. District Court
PAROLE

Carlin v. Wong, 552 F.Supp.2d 1023 (N.D.Cal. 2008). A state prisoner brought a federal habeas petition challenging a parole board's denial of parole. The district court granted the petition, finding that denial of parole violated the prisoner's due process liberty interest in parole arising under California law. The court found that the parole board's denial of parole was not supported by any evidence that the prisoner's release, after having served 27 years in prison for second degree murder, would threaten public safety, and, thus, violated the prisoner's due process liberty interest in parole under California law. The court noted that the prisoner, who was 61 years old, had served beyond his minimum sentence of 17 years, had stopped using drugs, participated in self-help programs and taken academic courses, had never had a major disciplinary violation in prison and his prison record had been free of any infractions for twenty years. The district attorney supported granting parole. (San Quentin State Prison, California)

U.S. Appeals Court
JURISDICTION
HAGUE CONVENTION

Carrascosa v. McGuire, 520 F.3d 249 (3rd Cir. 2008). A detainee sought a writ of habeas corpus seeking to end her detention in jail for violating a state court civil contempt order that directed her to return her child to the father's custody in the United States pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The district court denied her motion for reconsideration and the detainee appealed. The appeals court affirmed, finding that the detainee's incarceration was not in violation of laws or treaties of the United States, as required for a grant of habeas petition. The court noted that a Spanish court awarded custody of the child to the detainee, who had removed the child from her habitual place of residence in New Jersey without the American father's permission, in direct contravention of both the letter and spirit of the Hague Convention. The court noted that this also violated the principles of international comity by applying Spanish law, rather than New Jersey law, and therefore warranted refusal to afford comity to the decisions of Spanish courts. (Bergen County Jail, New Jersey)

U.S. Appeals Court
AEDPA- Antiterrorism and
Effective Death Penalty
Act

Davis v. Silva, 511 F.3d 1005 (9th Cir. 2008). A state prisoner brought a habeas petition challenging a prison disciplinary proceeding in which he was assessed a 150-day forfeiture of good-time credit. The district court dismissed the petition for failure to exhaust and the prisoner appealed. The appeals court reversed, finding that the prisoner provided the state court with sufficient facts to exhaust his state court remedies. The court noted that exhaustion under the Antiterrorism and Effective Death Penalty Act (AEDPA) requires that a habeas petitioner fairly present his federal claims to the highest state court available and the petitioner describes in the state proceedings both the operative facts and the federal legal theory on which his claim is based so that the state courts have a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. The court noted that exhaustion of state remedies under AEDPA does not require that a habeas petitioner present to the state courts every piece of evidence supporting his federal claims. According to the court the state prisoner's state habeas petition provided the state court with sufficient facts to address his claim that his due process right to call witnesses in a disciplinary proceeding was violated. The petition explicitly stated that the prisoner was denied his due process rights to a witness and made clear based on statute citations that the prisoner was charged with committing a battery upon someone who was not an inmate. The prisoner cited a statute governing denial and revocation of good-time credits, referred to a case holding that due process demands that an inmate be allowed to call witnesses in his defense in a disciplinary proceeding involving possible loss of good-time credits, and cited a regulation controlling disciplinary proceedings. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
PAROLE

Furnari v. U.S. Parole Com'n, 531 F.3d 241 (3rd Cir. 2008). A federal prisoner filed a petition for a writ of habeas corpus claiming that the United States Parole Commission had improperly denied parole to him. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The court found that the commission had timely performed its duties to set a "release date" early enough to permit the prisoner to appeal from that release date to the National Appeals Board before the Parole Commission expired. The court held that grant of parole was not warranted on the basis of a 100 year sentence, as a mitigating circumstance. (United States Parole Commission)

U.S. District Court
CREDIT FOR TIME
SERVED
PAROLE

Garner v. Caulfield, 584 F.Supp.2d 167 (D.D.C. 2008). A parolee filed a habeas petition to challenge his detention following revocation of his parole. The district court denied the petition. The court held that the parolee was not entitled to credit toward service of his sentence for his stay at a residential program akin to placement in a halfway house, which was a condition of parole. The court found that the Parole Commission issued a valid parole violator warrant before the date on which the petitioner would have reached his full-term expiration date, and therefore it was authorized to revoke the petitioner's parole. (United States Parole Commission, District of Columbia)

U.S. District Court
BAIL
DUE PROCESS

Garson v. Perlman, 541 F.Supp.2d 515 (E.D.N.Y. 2008). A state prison inmate, who had sought bail pending the direct appeal of his bribery conviction, sought federal habeas relief after a state court denied his motion. The inmate alleged violation of the Eighth Amendment's Excessive Bail Clause and a substantive due process violation. The district court dismissed the case. The court held that the Excessive Bail Clause does not encompass bail pending appeal. The court found that the inmate did not have a protected liberty interest in bail pending appeal, precluding his due process claim. (Mid-State Correctional Facility, New York)

- U.S. District Court
DISCIPLINE
- Gauthier v. Dexter*, 573 F.Supp.2d 1282 (C.D.Cal. 2008). A state prisoner filed a petition for habeas corpus challenging discipline imposed for trafficking in narcotics on prison grounds. The district court denied the petition, finding that the prisoner was given sufficient notice of the charges alleged against him, the officer at the prisoner's disciplinary hearing was impartial, and the prisoner's conviction was sufficiently supported by the informant's confidential statements. The court noted that prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of constitutional rights due to a defendant in such proceedings does not apply. The prison disciplinary committee determined that the prisoner distributed heroin from his cell window to other prisoners who sold it in the prison yard, supporting a drug trafficking violation and subsequent revocation of work credits. The court found that even though the determination was primarily based on statements from confidential informants, the informants had previously given reliable information, the information supporting the prisoner's violation was independently corroborated, and the informants incriminated themselves through their statements. (California Men's Colony East)
- U.S. District Court
PAROLE
- Hall v. Eichenlaub*, 559 F.Supp.2d 777 (E.D.Mich. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, challenging the Parole Commission's decision to impose successive terms of special parole after the prisoner's original special term of parole was revoked. The district court granted the petition, finding that the Parole Commission could not reimpose a successive term of special parole. The court noted that special parole is different from regular parole in three aspects: (1) it follows the term of imprisonment, while regular parole entails release before the end of the prison term; (2) it is imposed, and its length is selected by the sentencing judge, rather than by the Parole Commission; and (3) if the conditions of special parole are violated, the parolee is returned to prison to serve the entire parole term, and he does not receive credit for the time spent in non-custodial supervision. (Federal Correctional Institution in Milan, Michigan)
- U.S. District Court
CREDIT FOR TIME
SERVED
SENTENCE
- Huff v. Sanders*, 632 F.Supp.2d 903 (E.D.Ark. 2008). A federal prison inmate brought a habeas corpus petition, challenging the government's designation of the date of commencement of his sentence, and seeking additional presentence detention credit. The district court granted the petition in part and denied in part. The court held that: (1) the inmate satisfied the administrative exhaustion requirement even though he failed to comply with the Bureau of Prisons' (BOP) demands as to the form of the documents; (2) the federal sentence commenced on the date that the inmate was sentenced for federal charges and remanded to the custody of United States Marshal; (3) the inmate was entitled to credit against his federal sentence for all of his presentence incarceration; but (4) the inmate was not entitled to presentence detention credit for time spent in a residential drug treatment center. (Federal Detention Center, Houston, Texas, and Federal Correctional Institution, Oakdale, Louisiana)
- U.S. District Court
CONDITIONS OF
CONFINEMENT
- Ilna v. Zickefoose*, 591 F.Supp.2d 145 (D.Conn. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, alleging that she was denied necessary medical care in violation of her Eighth Amendment rights. The district court held that the claim was cognizable as a habeas petition. According to the court, the claim asserted by the prisoner who had been diagnosed with cervical cancer, that she was denied necessary medical care in federal prison in violation of her Eighth Amendment right to be free from cruel and unusual punishment, and seeking restoration of certain medical treatment, specifically hormone medication, was cognizable as a habeas petition challenging her conditions of confinement pursuant. (Federal Correctional Inst., Danbury, Conn.)
- U.S. District Court
ALIEN
CONDITIONS OF
CONFINEMENT
JURISDICTION
- In re Guantanamo Bay Detainee Litigation*, 577 F.Supp.2d 312 (D.D.C. 2008). In actions challenging the United States' detention of alleged enemy combatants at the Guantanamo Bay Naval Base, one detainee brought an emergency motion to compel access to his medical records and to order officials to provide him with a blanket and mattress in his cell. The district court denied the motion, finding that the court lacked jurisdiction to hear the claim. The court noted that no court, justice, or judge has jurisdiction to hear or consider an application for a writ of habeas corpus filed by, or on behalf of, an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination. The court also noted that no court, justice, or judge has jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such a determination. (United States Naval Base at Guantanamo Bay, Cuba)
- U.S. District Court
DISCIPLINE
DUE PROCESS
- Jones v. McDaniel*, 552 F.Supp.2d 1141 (D.Nev. 2008). A state prisoner sought a writ of habeas corpus seeking relief from sanctions imposed at two prison disciplinary hearings. The prisoner was sanctioned with 180 days of administrative segregation, loss of telephone privileges for 30 days, loss of canteen privileges, and referral for loss of 59 days of statutory good time. The district court granted the petition. The court held that there was no evidence to support the prisoner's convictions for violating prison disciplinary rules, as required to comply with the due process requirement that a factual basis be incorporated into a hearing officer's written statement. The court noted that the "written statement" requirement as to disciplinary proceedings against state inmates "is not a ritual that magically renders a disciplinary decision constitutional," but rather, a disciplinary board must explain the evidence relied upon, such that it is at very least possible to discern the factual basis of the conviction. According to the court, a hearing officer's denial of the prisoner's request to call the charging officer as a witness in the disciplinary hearing violated the prisoner's due process rights, so as to entitle the prisoner to habeas relief. (Ely State Prison, Nevada)
- U.S. District Court
ALIEN
JUVENILE
- Khadr v. Bush*, 587 F.Supp.2d 225 (D.D.C. 2008). A detainee at the United States Naval Base in Guantánamo Bay, Cuba, filed a petition for a writ of habeas corpus. The detainee moved for judgment on the pleadings or, in the alternative, for summary judgment, and the government filed a cross-motion to dismiss or to hold the petition in abeyance pending completion of military commission proceedings. The district court granted the motions in part and denied in part. The court held that the Military Commissions Act (MCA) did not bar a challenge to

detention based on the detainee's capture as a juvenile, but the detainee's challenge to detention based on his capture as a juvenile was barred by the habeas statute. The court found that a provision of the Military Commissions Act (MCA) barring courts from having jurisdiction over habeas petitions brought by or on behalf of an alien detained by the United States as an enemy combatant did not apply to the habeas claim brought by a detainee at the United States Naval Base in Guantánamo Bay, Cuba., where the detainee's claim was entirely independent from the prosecution, trial, or judgment of a military commission. But the court held that the detainee's petition challenged the conditions of his confinement, rather than the legality of his detention, and, thus, was barred by a provision of habeas statute barring the courts from having jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States as an enemy combatant. The court noted that the detainee's request for relief was not tantamount to a request for outright release and was more accurately characterized as a request seeking a different program or location or environment. (United States Naval Base in Guantánamo Bay, Cuba)

U.S. District Court
DUE PROCESS
GOOD-TIME

Kogut v. Ashe, 592 F.Supp.2d 204 (D.Mass. 2008). A county jail inmate petitioned for a writ of habeas corpus, alleging he was prevented from participating in various jail work programs as a result of discrimination based on his disability. The district court granted petition. The court held that the allegation that the inmate was prevented from participating in a good-time work program that would have affected the duration of his confinement as a result of discrimination in violation of the Americans with Disabilities Act (ADA) was sufficient to form the basis of habeas relief. The court noted that while an inmate may have no right under the Constitution to credit for good-time, he may not under Title II of the Americans with Disabilities Act (ADA) be barred, based on discrimination arising from his disability, from work programs that may have the effect of reducing his sentence. He alleged that he suffers from disabilities which affect his ability to perform certain types of work assigned in the jail. The inmate alleged that he was "denied any and/or all access" to work assigned through the "County Correctional Facilities Work Programs" and provided 16 inmate work request forms in support of this claim. (Worcester County Jail, Massachusetts)

U.S. Appeals Court
PROGRAMS
TRANSFER

Miller v. Whitehead, 527 F.3d 752 (8th Cir. 2008). Federal inmates brought separate § 2241 petitions for writs of habeas corpus alleging that the Bureau of Prisons (BOP) unlawfully declared them ineligible for placement at a halfway house. Following consolidation, the district court denied the petitions. The inmates appealed. The appeals court affirmed in part and dismissed in part. The court held that the petitions brought by the two inmates were rendered moot by their placement in halfway houses. The court found that the Bureau of Prisons (BOP) program statement establishing a policy concerning when the BOP would place the inmate in a Residential Re-Entry Center (RRC) did not conflict with a statute authorizing the BOP to designate the place of a prisoner's confinement by categorically excluding a class of inmates from the opportunity to be transferred to a RRC more than 11 to 13 months before release. According to the court, the plain language of the program statement allowed a decision regarding RRC referral earlier than 11 to 13 months before release, at the time when most inmates would have been serious candidates for such a transfer, and the program statement said only that the decision usually was made no later than that time. (Federal Prison Camp, Yankton, South Dakota)

U.S. District Court
PAROLE

Opalec v. Curry, 556 F.Supp.2d 1036 (N.D.Cal. 2008). An inmate brought a pro se action for a writ of habeas corpus, challenging a parole board's decision that he was not suitable for parole. The district court granted the petition, finding that denial of parole violated due process. According to the court, the board identified only one main reason for its decision that the inmate was not suitable for parole-- the commitment offense. The inmate had no disciplinary record in his 12 years in prison or in the 2 years he was in a county jail before he went to prison, had favorable psychological reports, had a stable social history, was remorseful, and had made realistic plans for his release and developed marketable skills. (Correctional Training Facility, Soledad, California)

U.S. Appeals Court
TRANSFER

Rodriguez v. Smith, 541 F.3d 1180 (9th Cir. 2008). A federal prison inmate brought a habeas corpus petition to compel the Bureau of Prisons (BOP) to immediately consider transferring him to a residential reentry center (RRC). The district court granted the petition, and the government appealed. The appeals court affirmed, finding that as a matter of first impression, the statute governing BOP's prisoner placement did not authorize regulations restricting placement in RRCs. According to the court, the statute governing the designation of the place of imprisonment did not authorize restricting prisoners' placement in residential reentry centers to lesser of the last 10% or the last six months of their sentences. The court found that the regulations violated the statute's clear instruction that all placement and transfer determinations take into consideration each of the five enumerated factors. (California)

U.S. District Court
RELEASE DATE

Strother v. Nardolillo, 583 F.Supp.2d 645 (E.D.Pa. 2008). A petitioner moved for a writ of habeas corpus to challenge the Pennsylvania Board of Probation and Parole's decision to detain him after the completion of his maximum sentence in a state prison for a parole violation related to a prior conviction in Delaware. The district court dismissed the petition as second or successive to a previous habeas petition and the petitioner appealed. The appeals court reversed. On remand, the district court held that the petitioner was required to show collateral consequences or continuing injury to maintain the petition. The court noted that the petitioner was released from custody during the pendency of the proceedings, and thus collateral consequences could not be presumed. (George W. Hill Correctional Facility, and Pennsylvania Board of Probation and Parole)

U.S. Appeals Court
GOOD-TIME CREDIT

Tablada v. Thomas, 533 F.3d 800 (9th Cir. 2008). A federal inmate sought a writ of habeas corpus, challenging the Bureau of Prisons' (BOP) calculation of good time credits in determining the length of time left to serve on his 20-year sentence. The district court denied the petition and the inmate appealed. The appeals court affirmed. The court held that the BOP's program statement, calculating good time credits based on the time served rather than the sentence imposed, reasonably interpreted the good time credit statute, despite the invalidity of a regulation with an identical methodology. According to the court, the inmate's good time credits were required to be calculated based on time served rather than on the sentence imposed. (Federal Correctional Institute, Sheridan, Oregon)

U.S. District Court HABEAS CORPUS RELIEF	<i>Welch v. Mukasey</i> , 589 F.Supp.2d 178 (N.D.N.Y. 2008). A state prisoner filed a petition for a writ of habeas corpus alleging that he was being illegally detained as a material witness in a federal investigation of an alleged conspiracy. The district court dismissed the petition, finding that the petitioner failed to state a claim upon which habeas relief could be granted. According to the court, the petitioner failed to allege any facts that would support a finding that he was in custody pursuant to any material witness warrant, that federal custody was imminent or that he was subject to a removal order. (Orleans Correctional Facility, New York)
U.S. District Court INTERSTATE COMPACT JURISDICTION	<i>Williams v. Warden-Central Detention Facility</i> , 538 F.Supp.2d 74 (D.D.C. 2008). A pretrial detainee filed a petition for a writ of habeas corpus, seeking to invoke his right to a speedy trial, or to be released from custody and to have all charges against him dropped. The district court denied the petition. The court held that the detainee was not entitled to federal habeas relief, despite the detainee's allegations of prosecutorial misconduct and violations of the Interstate Agreement on Detainers, Fifth Amendment presentment and due process clauses, Sixth Amendment right to speedy trial, and Fourteenth Amendment due process clause. According to the court, the record bore no suggestion that he had presented any of his claims to a state court, any delays were the result of the detainee's conduct, and the claims could all be properly resolved by a state court. (District of Columbia Central Detention Facility)
U.S. Appeals Court ACCESS TO COURT RELEASE DATE	<i>Wilson v. Johnson</i> , 535 F.3d 262 (4 th Cir. 2008). A former prisoner brought a § 1983 action against a department of corrections alleging wrongful imprisonment. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding the claim was cognizable. The court noted that the prisoner was not eligible for habeas relief since his sentence had expired and he would be left without any access to federal court if his § 1983 claim was barred. The prisoner had filed grievances with the prison administration when his release date was moved back by nearly three months but no formal administrative proceedings were initiated to resolve the complaint. (Virginia Department of Corrections)
U.S. Appeals Court DISCIPLINE	<i>Wilson-El v. Finnan</i> , 544 F.3d 762 (7 th Cir. 2008). A prisoner brought a habeas petition challenging his disciplinary conviction. The district court dismissed the petition and an appeal was taken. The appeals court affirmed, finding that the disciplinary finding that the prisoner was guilty of being a habitual conduct rule violator did not raise a constitutional violation addressable under habeas corpus. The court noted that the prisoner's prior disciplinary finding of guilt on a conduct report charging him with insolence played a role in the prison's designation of him as a habitual offender, and thus may indirectly have led to his loss of good-time credits. (Indiana)
U.S. District Court ALIEN MEDICAL CARE	<i>Zuhair v. Bush</i> , 592 F.Supp.2d 16 (D.D.C. 2008). An alien, who had petitioned for habeas relief from his detention in the Guantanamo Bay military facility, brought an emergency motion to compel immediate medical relief. The district court held that the court would appoint its own medical/mental health expert to examine the detainee and provide the court with a report and any recommendations. The court noted that evidence suggested that the health of the petitioner was continuing to deteriorate. (U. S. Naval Base in Guantánamo Bay, Cuba)
2009	
U.S. District Court HABEAS CORPUS RELIEF	<i>Al Ginco v. Obama</i> , 626 F.Supp.2d 123 (D.D.C. 2009). A detainee being held at the United States Naval Base at Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus, alleging that he was being unlawfully detained by federal officials. The district court granted the petition, finding that the detainee was not lawfully detainable as an enemy combatant pursuant to the Authorization for Use of Military Force (AUMF) and was entitled to habeas corpus relief. The court held that the prior relationship between the detainee and al Qaeda or the Taliban can be sufficiently vitiated by the passage of time, intervening events, or both, such that the detainee can no longer be considered to have been "part of" either organization at the time he was taken into custody by United States forces when determining whether the detainee may be held as an enemy combatant. (United States Naval Base at Guantanamo Bay, Cuba)
U.S. District Court CIVIL COMMITMENT	<i>Al Mutairi v. U.S.</i> , 644 F.Supp.2d 78 (D.D.C. 2009). A detainee at Guantanamo Bay military base filed a petition for a writ of habeas corpus challenging the lawfulness of his detention, and both the detainee and the government brought evidentiary motions. The district court granted the petition. The court held that the government was not entitled to have its evidence admitted with a presumption of accuracy and authenticity. The court found that evidence pertaining to the detainee's path and timing of travels was probative of what the detainee may have been doing during his travels and that evidence pertaining to the loss of the detainee's passport was probative. The court held that the detention of the detainee at Guantanamo Bay military base was unlawful. According to the court, although the government established that some of the detainee's conduct was consistent with persons who may have become part of al Wafa or al Qaida, there was nothing in the record beyond speculation that the detainee did, in fact, train or otherwise become part of one or more of those organizations. (Guantanamo Bay Naval Base, Cuba)
U.S. Appeals Court CREDIT FOR TIME SERVED SENTENCE	<i>Espinoza v. Sabol</i> , 558 F.3d 83 (1 st Cir. 2009). A federal prisoner convicted for drug offenses petitioned for a writ of habeas corpus. The district court denied the petition and the prisoner appealed. The appeals court affirmed. The court held that the prisoner was not entitled to credit for the 14-month period that he was at liberty after federal authorities inadvertently released him prior to the expiration of his sentence, and that the prisoner's sentence for escape, imposed approximately 10 years after he was sentenced on federal drug charges, was subject to the statutory presumption that the sentence should run consecutively. The court noted that the erroneous release happened only because the prisoner had escaped from his halfway house, causing the need to process him again when he was apprehended, and there was no showing that the government acted arbitrarily or intentionally to prolong the prisoner's sentence. According to the court, giving the prisoner credit for the time he was free would amount to rewarding him for his escape. (Federal Bureau of Prisons, Massachusetts)

U.S. District Court
CONDITIONS OF
CONFINEMENT

Forde v. Zickefoose, 612 F.Supp.2d 171 (D.Conn. 2009). A federal prisoner petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First and Fourth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted the government's motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by issues of fact as to: (1) whether the prisoner's exercise of her religion was substantially burdened by the prison's non-emergency cross-gender pat-down search policy; (2) whether the prisoner's exercise of her religion was substantially burdened by the prison's policy of requiring her to carry an identification photograph that showed her without a hijab to cover her head; and, (3) whether the prisoner's exercise of her religion was substantially burdened by the prison's failure to provide an imam during Ramadan. The court held that the prison's non-emergency cross-gender pat-down search policy did not violate the prisoner's limited right, under the Fourth Amendment, to bodily privacy. According to the court, although the prisoner made a sufficient showing of a subjective expectation of privacy, the expectation would not be considered reasonable by society, since the prison had a legitimate penological interest in security and in providing equal employment opportunities to both male and female staff, and no available further accommodation was reasonable under the circumstances. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
ALIEN
JURISDICTION
TRANSFER

Kiyemba v. Obama, 561 F.3d 509 (D.C. Cir. 2009). Nine detainees at the United States naval base at Guantanamo Bay, Cuba, petitioned for a writ of habeas corpus. The detainees requested interim relief requiring the government to provide 30 days' notice to the court and counsel before transferring them from the naval base, asserting fears that they would be transferred to a country where they might be tortured or further detained. The district court entered requested orders and the government appealed. The appeals court vacated. The court held that the district court could exercise jurisdiction over claims related to the detainees' potential transfer. According to the court, a provision of the Military Commissions Act (MCA) eliminating jurisdiction over non-habeas actions against the United States or its agents relating to any aspect of a detainees' transfer did not apply to preclude jurisdiction over the detainees' claims for notice of transfer. But the court found that a writ of habeas corpus was not available to bar the detainee's transfer based upon the likelihood of a detainee being tortured in recipient country. The district court could not issue a writ of habeas corpus to bar the transfer of a detainee based upon the expectation that the recipient country would detain or prosecute the detainee. (United States Naval Base, Guantanamo Bay, Cuba)

U.S. District Court
GOOD TIME CREDIT
PROGRAMS

Kogut v. Ashe, 602 F.Supp.2d 251 (D.Mass. 2009). A state prisoner filed a petition for a writ of habeas corpus, alleging that he had been discriminatorily excluded from work programs in which he could have earned good-time credits, in violation of the Americans with Disabilities Act (ADA). The district court dismissed the petition, finding that the prisoner's alleged disabilities were not the reason for his exclusion from the work programs, as would violate the ADA. The prisoner was excluded from the work programs because he had been the subject of over 30 incident reports for harassment of staff, fights with other inmates, and other disciplinary infractions, and several of those incidents required the prisoner's segregation from general prison population. The court noted that disciplinary issues and concerns over prison security may be legitimate non-discriminatory grounds for limiting access to a jail program. (Worcester County Jail, Massachusetts)

U.S. District Court
GOOD TIME CREDIT
PAROLE

Lorando v. Waldren, 629 F.Supp.2d 60 (D.D.C. 2009). A parolee filed a petition for habeas corpus challenging the loss of good time credits due to a parole violation. The district court denied the petition. The court held that the parolee's rights were not violated when he was not afforded a probable cause hearing before the United States Parole Commission (USPC) within five days after he was taken into custody pursuant to a parole violation warrant. According to the court, the parolee suffered no prejudice from the delay, and to the extent that he sought release from custody due to the delay, his request was mooted by his re-parole. The court found that even if the United States Parole Commission (USPC) had incorrectly determined that the parolee had five, not four, prior convictions in revoking parole, the parolee was not prejudiced by determination, since the salient factor score would have been identical because four or more prior convictions were accorded the same weight. ((District of Columbia Central Detention Facility, U.S. Parole Commission)

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Morgan v. Quarterman, 570 F.3d 663 (5th Cir. 2009). A petitioner filed a habeas petition challenging a disciplinary proceeding that resulted in loss of good time credit due to his use of indecent or vulgar language in a note he mailed to opposing counsel in an unrelated habeas proceeding. The district court granted summary judgment for the government and the petitioner appealed. The appeals court affirmed. The appeals court held that the state prison had a legitimate penological interest in rehabilitation that justified its revocation of 15 days of the prisoner's good time credit as punishment for violating a disciplinary rule prohibiting the use of indecent or vulgar language when the prisoner mailed to a state's attorney in habeas proceeding a note written on toilet paper stating, "Please use this to wipe your ass, that argument was a bunch of shit." According to the court, the punishment was not an impermissible infringement of the prisoner's First Amendment right to free speech. The court noted that the prisoner's note demonstrated a completely unjustified disrespect for authority, expressed in the most unacceptably vulgar form, which would be offensive in mainstream society, and the prison's disciplinary action served to correct behavior that would seriously prejudice the prisoner when he returns to the civil world. The court found that requirements of due process were satisfied at the prisoner's hearing where the prisoner: received notice of the disciplinary hearing and his attendant rights; he was provided assistance of a counsel substitute; the prisoner called the charging officer as a witness and that officer testified via speaker phone; the hearing officer's denial of the prisoner's request that the prison's mail room supervisor and Assistant Attorney General be called as witnesses was warranted since the prisoner's note was not intercepted; and that the charging officer's report and testimony, the prisoner's admission that the note was in his handwriting, and prison mail logs all supported the finding against him. (Texas Department of Criminal Justice, Correctional Institutions Division, Stevenson Unit)

U.S. Appeals Court SENTENCE	<i>Straley v. Utah Bd. of Pardons</i> , 582 F.3d 1208 (10 th Cir. 2009). A prisoner brought a habeas petition challenging the constitutionality of Utah's indeterminate sentencing scheme. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that Utah's indeterminate sentencing scheme did not violate the prisoner's due process rights and Utah parole statutes did not create a liberty interest entitling the prisoner to federal due process protections. (Utah Board of Pardons)
U.S. Appeals Court PAROLE	<i>Terrell v. U.S.</i> , 564 F.3d 442 (6 th Cir. 2009). A federal prisoner serving a life sentence for murder filed a petition for a writ of habeas corpus asking the court to order in-person parole determination hearings. The district court granted the petition, and the government appealed. The appeals court affirmed. The court held that the United States Parole Commission's use of videoconferencing to conduct parole determination proceedings violated the Parole Commission Reorganization Act's requirement that a prisoner shall be allowed to "appear and testify" on his own behalf at the parole determination hearing. According to the court, the meaning of the term "appear" at the time the Parole Commission Reorganization Act was enacted was unambiguous and required an in-person hearing, given that other methods, such as videoconferencing, did not exist at the time of the enactment. The court noted that relief for a prisoner under the federal habeas statute and under § 1983 are not necessarily mutually exclusive remedies in the parole context, and that the claim brought by the prisoner pursuant to habeas statute was cognizable under habeas statute as a challenge to the execution of his sentence. (Branch Prison, Marquette, Michigan)
U.S. District Court ACCESS TO COURTS	<i>Twitty v. Ashcroft</i> , 712 F.Supp.2d 30 (D.Conn. 2009). A federal prisoner, who brought an action alleging that a state department of correction employee used excessive force in violation of the Eighth Amendment, moved for a writ of habeas corpus, requesting that Bureau of Prisons (BOP) transport him from Colorado to Connecticut to attend his civil trial. The district court denied the motion. The court held that expense and security concerns outweighed the prisoner's interest in physically appearing at the trial, precluding an issuance of a writ of habeas corpus. The court noted: (1) that it would cost the Bureau of Prisons about \$70,000 to transport the prisoner from Colorado to Connecticut for the trial; (2) that he would be temporarily housed in a less secure facility than the one in Colorado; and (3) that transporting the prisoner between the facility and the courthouse, a trip of eighty miles in each direction, and supervising him during trial would require the assistance of multiple United States Marshals and presented a risk of escape, a risk of harm to law enforcement officers and danger to public. According to the court, the Colorado facility offered to permit the prisoner to appear at trial via videoconference, which was a reasonable alternative in the circumstances. (United States Penitentiary, Administrative Maximum, Florence, Colorado)
U.S. District Court CONDITIONS TRANSFER	<i>U.S. v. Rojas-Yepes</i> , 630 F.Supp.2d 18 (D.D.C. 2009). A prisoner who was being held in a medium-security facility after his extradition from Colombia and who was pending trial, moved to modify his jail conditions after the Department of Corrections (DOC) received a copy of the indictment and he was therefore reclassified as a "maximum custody" prisoner and placed in a special management unit (SMU) pending his transfer to a maximum-security facility. The district court denied the motion. The court held that the prisoner's claim for modification of his jail conditions would be construed as a habeas petition. The court found that the prisoner lacked a property or liberty interest in his classification and placement. The court noted that classification was not a fixed entitlement, but rather was revisited every 90 days based on changed conditions and new facts. According to the court, the DOC did not violate the prisoner's equal protection rights by reclassifying him, where the prisoner was reclassified based, not on national origin, but rather on the nature of the charges against him and how much power and influence he was alleged to have within the charged drug-trafficking conspiracy. The court found that the DOC's classification procedures were rationally related to a legitimate interest in maintaining order and safety in detention facilities. (Correctional Treatment Facility, District of Columbia Jail)

2010

U.S. District Court RELIGION	<p><i>Forde v. Baird</i>, 720 F.Supp.2d 170 (D.Conn. 2010). A federal inmate petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the defendants, in part, and denied in part. The court held that the Muslim inmate's right to free exercise of religion was substantially burdened, as required to support her claim under RFRA, by a prison policy allowing for non-emergency pat searches of female inmates by male guards, despite prison officials' claim that the inmate's belief was not accurate. The court found that the choice offered the inmate, of violating her understanding of the precepts of Islam, or refusing a search and risking punishment, constituted a substantial burden.</p> <p>The court found that the prison's interest in maintaining safety and security of the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA, where the prison's arguments regarding how and why the cross-gender pat searches promoted safety and security at the prison were actually related to the staffing of the facility, not to its safety and security. According to the court, the prison's interest in avoiding staffing and employment issues at the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA. The court noted that even if the prison's interests in maintaining safety and security and avoiding staffing and employment issues were compelling, cross-gender pat searches were not the least restrictive means of addressing these interests, as required to justify the substantial burden on an inmate's right of free exercise of religion under RFRA, absent evidence that the prison considered and rejected less restrictive practices to cross-gender pat searches. (Federal Correctional Institution in Danbury, Connecticut)</p>
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U.S. District Court ALIEN DUE PROCESS EXHAUSTION PLRA- Prison Litigation Reform Act	<p><i>Franco-Gonzales v. Holder</i>, 767 F.Supp.2d 1034 (C.D.Cal. 2010). Aliens, who were diagnosed with severe mental illnesses, filed a class action, alleging that their continued detention without counsel during pending removal proceedings violated the Immigration and Nationality Act (INA), the Rehabilitation Act, and the Due Process Clause. The aliens moved for a preliminary injunction. The district court granted the motion in part. The court held that the aliens were not required to exhaust administrative remedies, since the very core of the aliens' claim was that without the appointment of counsel, they would be unable to meaningfully participate in the administrative process before the BIA, and the BIA did not recognize a right to appointed counsel in removal proceedings under any circumstances; therefore, resort to the BIA would be futile. The court held that the mentally ill aliens who were detained pending removal proceedings, without counsel and for prolonged periods without custody hearings, were entitled to a mandatory preliminary injunction requiring the immediate appointment of qualified counsel to represent them during their immigration proceedings and custody hearings. (Department of Homeland Security, Immigration and Customs Enforcement, Northwest Detention Center, Tacoma, Washington)</p>
U.S. Appeals Court HABEAS CORPUS RELIEF PROGRAMS SENTENCE DUE PROCESS	<p><i>Gonzalez-Fuentes v. Molina</i>, 607 F.3d 864 (1st Cir. 2010). A class of prisoners convicted of murder, who had been released pursuant to an electronic supervision program (ESP), filed a complaint under § 1983, seeking a preliminary injunction against their re-incarceration pursuant to a regulation which became effective after their releases. The district court granted a preliminary injunction and the Commonwealth of Puerto Rico appealed. Another class of prisoners who had been re-incarcerated filed a separate petition for a writ of habeas corpus and the district court granted the petition. The district court consolidated the two cases, and denied the Commonwealth's motion to dismiss. The commonwealth appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that re-incarceration of the prisoners convicted of murder under a new regulation eliminating the ESP program for prisoners convicted of murder, did not violate the ex post facto clause, where the prisoners had committed their crimes of conviction at times predating the creation of the ESP, so that Puerto Rico's decision to disqualify prisoners from participating in the ESP had no effect on the punishment assigned by law. The court also held the re-incarceration of the prisoners convicted of murder did not violate substantive due process. The court found that although the impact of re-incarceration on the prisoners was substantial, Puerto Rico had a justifiable interest in faithfully applying the new statute which barred prisoners convicted of murder from the ESP program. According to the court, there was no showing that Puerto Rico acted with deliberate indifference or that re-imprisonment was conscience-shocking.</p> <p>But the court found that the prisoners convicted of murder, who had been released for several years pursuant to the ESP, had a protected due process liberty interest in their continued participation in the ESP program, despite the fact that their releases were premised on lower court determination, which was later overturned, that the statute eliminating such prisoners from the program violated the ex post facto clause. The prisoners were serving out the remainder of their sentences in their homes, where they lived either with close relatives, significant others, or spouses and children, and although they were subject to monitoring with an electronic tracking anklet, and routine drug and alcohol testing, they were authorized to work at a job or attend school. The court also found that the re-incarceration of the prisoners deprived them of procedural due process, where the prisoners were not given any pre-hearing notice as to the reason their ESP status was revoked, and the prisoners had to wait two weeks after their arrest before receiving any opportunity to contest it. The court concluded that the prisoners whose procedural due process rights were violated by their re-incarceration or their imminent future re-incarceration after determination that they had been unlawfully admitted into the ESP were not entitled to either habeas relief, for those already re-imprisoned, or preliminary injunctive relief for those yet to be re-imprisoned, where the subsequent Puerto Rico statute provided a valid, independent, constitutional basis for the prisoners' re-incarceration. (Puerto Rico Department of Justice, Puerto Rico Administration of Corrections)</p>
U.S. District Court DUE PROCESS PAROLE	<p><i>Hart v. Curry</i>, 716 F.Supp.2d 863 (N.D.Cal. 2010). A state inmate filed a petition for a writ of habeas corpus challenging a state court decision upholding a governor's reversal of the state parole board's grant of parole. The district court granted the petition. The court held that California law created a due process liberty interest in having the governor's reversal be supported by some evidence as to how aggravated circumstances of commitment the offense indicated a risk of current dangerousness. The court found that the determination that the governor's reversal based solely on circumstances surrounding commitment of the offense was supported by some evidence was unreasonable. (Correctional Training Facility, Soledad, California, and California Board of Parole)</p>
U.S. District Court GOOD TIME CREDIT RELEASE DATE	<p><i>Hill v. Cowin</i>, 717 F.Supp.2d 268 (N.D.N.Y. 2010). A prisoner filed a § 2241 habeas petition alleging he was being unlawfully held in prison beyond his release date because the Bureau of Prisons (BOP) improperly calculated his Good Conduct Time (GCT). The district court granted the petition, finding that the BOP improperly calculated the prisoner's GCT, resulting in his being held beyond his release date. (Federal Bureau of Prisons)</p>
U.S. District Court DISCIPLINE	<p><i>Hopkins v. Grondolsky</i>, 759 F.Supp.2d 97 (D.Mass. 2010). A prisoner filed a petition for a writ of habeas corpus. The Federal Bureau of Prisons (BOP) filed a motion to dismiss. The district court dismissed the case, finding that the loss of 90 days of commissary privileges as a disciplinary action was not a loss of any protected liberty interest, and allegations were insufficient to plead prison regulations unreasonably burdened the prisoner's constitutional rights. (Federal Bureau of Prisons, Sex Offender Management Program, FMC Devens, Massachusetts)</p>
U.S. Appeals Court GOOD-TIME CREDIT PROGRAMS	<p><i>Izzo v. Wiley</i>, 620 F.3d 1257 (10th Cir. 2010). A federal inmate petitioned for a writ of habeas corpus, challenging a decision of the Bureau of Prisons (BOP) denying his eligibility for the Elderly Offender Home Detention Pilot Program. The district court denied the petition and the inmate appealed. The appeals court affirmed. The court held that the provision of the Second Chance Act (SCA) making an offender eligible for the Elderly Offender Home Detention Pilot Program if he is at least 65 years old and has served 75% of the term of imprisonment to which he was sentenced refers to the term imposed by the sentencing court, without any consideration of good time credit. (Federal Bureau of Prisons, Colorado)</p>

U.S. Appeals Court PROGRAMS	<i>Mora-Meraz v. Thomas</i> , 601 F.3d 933 (9 th Cir. 2010). A federal prisoner petitioned for a writ of habeas corpus challenging a decision of the United States Bureau of Prisons (BOP) to deny him eligibility for admission to a Residential Drug Abuse Program (RDAP). The district court denied the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that BOP's promulgation of a rule requiring the federal prisoner to present documented proof of substance use within 12 months of imprisonment to be eligible for admission to RDAP was a valid interpretive rule, and that implementation of the 12-month rule was neither arbitrary nor capricious under the Administrative Procedure Act. The court noted that a reasonable basis existed for the BOP decision to adhere to 12-month rule in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM-IV), and a reasonable basis existed for the Bureau to apply that rule to require documented use of drugs within 12 months prior to incarceration. (United States Bureau of Prisons, Federal Correctional Institution at Sheridan, Oregon)
U.S. District Court DUE PROCESS HABEAS CORPUS RELIEF	<i>Santibanez v. Havlin</i> , 750 F.Supp.2d 1121 (E.D.Cal. 2010). A petitioner filed for a writ of habeas corpus, challenging a state prison disciplinary conviction resulting from a rules violation report. The district court granted the petition. The district court held that a state appellate court's determination that sufficient evidence existed to convict the petitioner challenging state prison disciplinary conviction of possession of escape paraphernalia was contrary to clearly established federal law; rather than applying the "some evidence" standard, as required to comport with due process, the trial court had unreasonably based its denial of habeas relief on general observations regarding courts' customary deference to the judgment of prison officials. (California State Prison-Solano)
U.S. District Court PAROLE	<i>Sieu Phong Ngo v. Curry</i> , 745 F.Supp.2d 1031 (N.D.Cal. 2010). A state prisoner, proceeding pro se sought a writ of habeas corpus, challenging a decision by the California Board of Parole Hearings finding him unsuitable for parole. The district court granted the motion, finding that the prisoner was entitled to habeas relief because the state court unreasonably applied California's "some evidence" requirement when finding him unsuitable for parole. The court noted that the record demonstrated that, since being incarcerated, the prisoner had not been involved with gang-related activities or engaged in any violence, the prisoner's commitment offense for murder did not amount to "some evidence," he repeatedly apologized for his role in the victim's death, he accepted responsibility for the murder, and psychological reports indicated that the prisoner was remorseful, showed significant insight into his commitment offense, and recognized the negative aspects of gang involvement. (California Board of Parole Hearings)
2011	
U.S. District Court PROGRAMS GOOD TIME	<i>Bonadonna v. Grondolsky</i> , 762 F.Supp.2d 311 (D.Mass. 2011). A federal inmate filed a habeas petition challenging the Federal Bureau of Prisons' (BOP) determination that he was ineligible to participate in the Elderly Offender Home Detention Pilot Program. The district court dismissed the action. The court held that good time credit could not be considered in determining whether the inmate was eligible for home detention by satisfying the requirement that he serve 75% of his "term of imprisonment." The court also held that due process did not require that the inmate receive a hearing prior to denial of his request. (Federal Medical Center, Devens, Massachusetts)
U.S. District Court DISCIPLINE	<i>Cobbs v. Superintendent</i> , 821 F.Supp.2d 1071 (N.D.Ind. 2011). After he was found guilty in a prison disciplinary hearing of possessing an unauthorized electronic device, a prisoner petitioned for federal habeas relief. The district court granted the petition. The court held that the prison disciplinary hearing body's (DHB) failure to review a potentially exculpatory segment of videotape evidence to determine if other inmates planted the cell phone, warranted the grant of a petition for federal habeas relief. (New Castle Correctional Facility, Indiana)
U.S. Appeals Court ACCESS TO COURTS ALIEN RELEASE DATE	<i>Diouf v. Napolitano</i> , 634 F.3d 1081 (9 th Cir. 2011). A Senegalese detainee, who was subject to a voluntary departure order or an alternate removal order, filed a petition for a writ of habeas corpus requesting a preliminary injunction for immediate release from prolonged immigration detention. The district court denied the petitioner's motion, and the petitioner appealed. The appeals court reversed and remanded. The court held that an alien subject facing prolonged detention is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community. (U.S. Immigration and Customs Enforcement, San Pedro Detention Facility, California)
U.S. District Court GOOD-TIME CREDIT PLRA- Prison Litigation Reform Act PROGRAMS	<i>Reyes-Morales v. Wells</i> , 766 F.Supp.2d 1349 (S.D.Ga. 2011). An alien federal prisoner petitioned for habeas relief, challenging the Federal Bureau of Prisons' (BOP) decision to reduce good conduct time (GCT) applied to his sentence after he withdrew from a literacy program required by the Prison Litigation Reform Act (PLRA). The district court denied the petition. The court held that the prisoner was not subject to a final order of removal, deportation, or exclusion, as required to receive the 54-day per year Good Conduct Time award, despite nonparticipation in a literacy program. According to the court, the BOP's regulations and program statements concerning loss of GCT time due to nonparticipation in a literacy program were a reasonable interpretation of PLRA. The court found that the reduction of GCT did not violate the prisoner's procedural due process rights. (McRae Correctional Facility, Georgia)
U.S. District Court PROGRAMS	<i>Santiago-Lebron v. Florida Parole Com'm</i> , 767 F.Supp.2d 1340 (S.D.Fla. 2011). A federal inmate petitioned for habeas relief, seeking immediate release based on the Bureau of Prisons' (BOP) cancellation of the Spanish Residential Drug and Alcohol Program (RDAP). The district court dismissed the action. The court held that: (1) BOP did not violate the Ex Post Facto Clause in canceling the Spanish RDAP; (2) the prisoner was not "similarly situated" to English-speaking inmates who took the English RDAP; (3) termination of the Spanish RDAP was rationally related to a legitimate government purpose; (4) BOP was not required to comply with APA's "no-

tice and comment” requirement before canceling the Spanish RDAP; and (5) cancellation of the Spanish RDAP was a permissible construction of the statute requiring BOP to provide substance abuse treatment to eligible inmates. The court noted that the prisoner had not started the program, much less successfully completed it or been provided with a determination of eligibility for early release, prior to the date the amended policy became effective. According to the court, the prisoner did not have a settled expectation of participating in the Spanish Residential Drug and Alcohol Program (RDAP) and potentially receiving a sentence reduction, and thus no ex post facto violation occurred when the Spanish RDAP was cancelled, where the prisoner had not yet begun RDAP when it was cancelled. (Federal Correctional Institution, Miami, Florida)

U.S. District Court
ALIEN
BAIL
DUE PROCESS
RELEASE DATE

Tkochenko v. Sabol, 792 F.Supp.2d 733 (M.D.Pa. 2011). An immigration detainee filed a petition for a writ of habeas corpus seeking review of her continuing custody by immigration officials. The district court granted the petition. The court held that although the immigration detainee, a native and citizen of Ukraine who was convicted of possessing small quantities of drugs, was subject to immigration laws' mandatory detention provisions applicable to aliens convicted of drug offenses, the two-year duration of her detention by immigration officials pending entry of a final removal order offended due process considerations. The court held that the detainee was entitled to federal habeas relief in the form of bail consideration. The court noted that the detainee's detention was almost five times the typical 5-month length of detention acknowledged as presumptively reasonable by the Supreme Court, and the lengthy period of detention was largely attributable to litigation decisions made by the government, and the period of detention had no fixed, finite, or identifiable duration. (York County Prison, Pennsylvania)

2012

U.S. District Court
ALIEN
CIVIL COMMITMENT
INTERROGATION
SEGREGATION

Al-Zahrani v. Rodriguez, 669 F.3d 315 (D.C.Cir. 2012). Survivors of detainees who died at the Guantanamo Bay Naval Base sued the United States and a host of government officials under the Alien Tort Claims Act (ATCA), the Federal Tort Claims Act (FTCA), and the Fifth and Eighth Amendments. The survivors asserted that the detainees had been subjected to physical and psychological torture and abuse, inadequate medical treatment and withholding of necessary medication, and religious abuse. The district court granted the government's motion to be substituted as the defendant on the ATCA claims and its motion to dismiss both the ATCA and the FTCA claims. The appeals court later denied the survivors' motion for reconsideration. The survivors appealed. The appeals court affirmed on other grounds. The appeals court held that habeas corpus statute amendments barred federal court jurisdiction over the action. (Guantanamo Bay Naval Base, Cuba)

U.S. Appeals Court
JUVENILE
SENTENCE

Bunch v. Smith, 685 F.3d 546 (6th Cir. 2012). A state inmate filed a petition for a writ of habeas corpus. The district court denied the petition, and the petitioner appealed. The appeals court affirmed, finding that a state court's determination that the juvenile petitioner's 89-year sentence did not violate the Eighth Amendment was reasonable, was not contrary to, or an unreasonable application of, clearly established federal law, and thus did not warrant federal habeas relief, despite the juvenile's contention that his consecutive, fixed-term sentences amounted to the practical equivalent of life without parole. (Ohio)

U.S. Appeals Court
HABEAS CORPUS
RELIEF
STATUTE OF
LIMITATIONS

Burd v. Sessler, 702 F.3d 429 (7th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that they deprived him of access to the courts by preventing him from using library resources to prepare a motion to withdraw his guilty plea. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the claim was barred by *Heck v. Humphrey*. The court noted that such a claim for damages would require the prisoner to show that the deprivation of access hindered his efforts to successfully withdraw his guilty plea, which would necessarily implicate the validity of the prisoner's conviction that he incurred on account of that guilty plea. The court noted that even if the prisoner was no longer in custody at the time of his § 1983 suit, he could have pursued federal habeas relief while in custody, but failed to do so. Under Illinois practice, the prisoner had thirty days to file a motion to withdraw his guilty plea, but for the first twenty-nine days of this period, he was held at prison facilities that lacked library resources of any kind. (Sheridan Correctional Center, Illinois)

U.S. Appeals Court
GOOD-TIME CREDIT
SEGREGATION

Cardona v. Bledsoe, 681 F.3d 533 (3rd Cir. 2012). A federal inmate petitioned for habeas relief arguing that the federal Bureau of Prisons (BOP) illegally referred him to the Special Management Unit (SMU) of a penitentiary in which he was currently placed, as punishment for filing numerous lawsuits against the BOP. The district court dismissed the action. The prisoner appealed. The appeals court affirmed. The court held that the inmate's petition for habeas relief did not concern the execution of his sentence, and thus the district court did not have subject-matter jurisdiction over it, since the inmate did not allege that the BOP's conduct was somehow inconsistent with the command or recommendation in the sentencing judgment; even if the inmate's placement in SMU made him eligible to lose good time credits, he might not end up losing any. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
ALIEN
HABEAS CORPUS
RELIEF
ACCESS TO COURTS

In re Guantanamo Bay Detainee Continued Access to Counsel, 892 F.Supp.2d 8 (D.D.C. 2012). In habeas proceedings challenging aliens' detentions at the U.S. Naval Facility at Guantanamo Bay, Cuba, four detainees moved individually to dismiss their habeas petitions without prejudice, conditioned on their continued access to counsel under the protective order previously created to assure such rights. Counsel for two other detainees, who were denied access to their counsel following the denial of their habeas petitions, moved for an order affirming that the protective order continued to apply to them. The district court consolidated the motions and held that the protective order continued to govern access to counsel issues for all detainees who had a right to petition for habeas relief. (U.S. Naval Facility at Guantanamo Bay, Cuba)

U.S. District Court ALIEN BAIL	<i>Leslie v. Holder</i> , 865 F.Supp.2d 627 (M.D.Pa. 2012). An alien, a native, and citizen of Jamaica, petitioned for a writ of habeas corpus contending that his continued detention by United States Immigration and Customs Enforcement (ICE) for four years without a bond hearing was unconstitutional. The district court denied the petition. The alien appealed. The appeals court reversed and remanded for the purpose of a bond hearing. The district court released the alien on bond with conditions. The court held that the alien was entitled to the grant of bail, pending a final removal order. The court noted that although the alien had prior drug convictions and a history of drug abuse, all of the convictions were over a decade old, the alien suffered from multiple health problems, including degenerative spine disease, high blood pressure, and gastro-intestinal ailments, he credibly asserted that the passage of time and his age of 59 years tempered his conduct, the alien earned his high school equivalency certificate in prison, he participated in drug treatment and counseling, one immigration judge had found that the alien had learned his lesson and was not a danger to community, the alien had an extensive and supportive family in the United States, two family members agreed to serve as custodians for the alien upon his release, and the habeas claim that he was subjected to unreasonably prolonged detention had substantial merit. The court imposed bail conditions that the alien not violate any laws while on release, that the alien advise the District Court and immigration officials before making a change of residence or phone number, that the alien appear as required for removal proceedings, that the alien be supervised by immigration authorities, and that the alien be released to the custody of a third-party custodian, the alien's sister-in-law, who was required to certify that she would ensure the alien's compliance with all bail conditions. (United States Immigration and Customs Enforcement, Pennsylvania)
U.S. Appeals Court RELEASE DATE	<i>Marlowe v. Fabian</i> , 676 F.3d 743 (8 th Cir. 2012). A former state prisoner filed a § 1983 action against two Department of Corrections (DOC) officials for his allegedly unconstitutional imprisonment 375 days beyond the date on which he became eligible for supervised release, purportedly violating his Fourth, Fifth, Eighth, and Fourteenth Amendment rights. The district court granted the officials summary judgment. The former prisoner appealed. The appeals court affirmed. The appeals court held that a state court of appeals' decision, remanding to the trial court the petitioner's habeas claim seeking immediate release from state prison, was not "favorable termination," thus barring his § 1983 claim, since the remand decision did not reverse, expunge, invalidate, or impugn his incarceration by grant of writ of habeas corpus, but rather directed the Department of Corrections (DOC) to consider restructuring his release plan and to seek to develop a plan that could lead to his release from prison by satisfying all conditions of supervised release. (Minnesota Department of Corrections)
U.S. District Court GOOD-TIME CREDIT	<i>Mitts v. Zickefoose</i> , 869 F.Supp.2d 568 (D.N.J. 2012). A federal prisoner filed a petition for a writ of habeas corpus, challenging his loss of good conduct time (GCT) credit following a finding that he was guilty of committing the disciplinary infraction of fighting. The prisoner's claims were screened and his claims relating to his transfer and loss of privileges were dismissed. The district court held that the prisoner was denied a meaningful opportunity to call witnesses at his disciplinary hearing, warranting federal habeas relief directing the Bureau of Prisons (BOP) to provide him with a curative hearing, where the prisoner, having been placed in solitary confinement, without assistance of a staff representative, was unable to either detect the identities of inmate witnesses or to determine whether another inmate involved in the altercation confessed to him being merely the victim of that inmate's violence. (FCI Fort Dix and U.S. Penitentiary Hazelton, West Virginia)
U.S. Appeals Court RELIGION STATUTE OF LIMITATIONS	<i>Pouncil v. Tilton</i> , 704 F.3d 568 (9 th Cir. 2012). A state prisoner brought a § 1983 action alleging that denials by prison officials of his request for a conjugal visit with his wife violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment by interfering with his practice of a tenet of his Islamic faith requiring him to marry, consummate his marriage, and father children. The district court denied a prison official's motion to dismiss the prisoner's claims as untimely, and the official appealed. The appeals court affirmed. The court held that notwithstanding a prior denial pursuant to the same regulation, denial of the prisoner's second request for a conjugal visit was a separate, discrete act, triggering running of the statute of limitations on the prisoner's Section 1983 claim against prison officials for violation of his First Amendment and RLUIPA rights. (Mule Creek State Prison, California)
U.S. Appeals Court PAROLE PROGRAMS SEX OFFENDER	<i>Roman v. DiGuglielmo</i> , 675 F.3d 204 (3 rd Cir. 2012). A state prisoner petitioned for a writ of habeas corpus, after a state court denied habeas relief, alleging that state's decision to deny him parole, unless he admitted his guilt and participated in sex offender treatment program, violated his Fifth Amendment right against self incrimination. The district court denied the petition and the prisoner appealed. The court held that the parole condition did not violate the prisoner's right against self incrimination. The court noted that the state had a legitimate interest in rehabilitating prisoners, the prisoner did not have any right or entitlement to parole under state law, his sentence was not lengthened, and the actual conditions of his imprisonment had not been altered. (Pennsylvania)
U.S. District Court SENTENCE	<i>Sweat v. Grondolsky</i> , 898 F.Supp.2d 347 (D.Mass. 2012). An inmate filed a petition for a writ of habeas corpus against a warden, alleging that the Federal Bureau of Prisons (BOP) had failed to give him credit for time he served in state custody. The warden moved for summary judgment. The district court granted the motion. The court held that the BOP was bound by a federal court's express designation that the inmate's federal sentence should run consecutively to the state sentence, and the inmate's claim that the sentencing judge incorrectly construed the facts of his case, and therefore misapplied the provisions of a sentencing guideline, had to be brought in a motion to vacate the sentence before the sentencing court. (Federal Medical Center, Devens, Massachusetts)
U.S. District Court SEGREGATION TRANSFER	<i>U.S. v. Bout</i> , 860 F.Supp.2d 303 (S.D.N.Y. 2012). A federal prisoner convicted of multiple conspiracies to kill United States nationals, kill officers and employees of the United States, acquire, transfer, and use anti-aircraft missiles, and provide material support to a designated foreign terrorist organization, who had been held in solitary confinement, moved to be transferred to the general prison population. The motion was construed as a habeas petition. The district court held that continued solitary confinement violated the prisoner's Eighth

Amendment rights. According to the court, the decision of the federal Bureau of Prisons (BOP) to indefinitely hold the federal prisoner in solitary confinement was not rationally related to any legitimate penological objectives and thus violated the prisoner's Eighth Amendment rights. The court found that although the BOP argued that the prisoner's release from solitary confinement would pose a high security risk, there was no evidence that the prisoner had a direct affiliation with any member of a terrorist organization, or that he personally engaged in violent acts. The court concluded that the prisoner did not present an unusually high risk of escape or harm to others, any involvement that the prisoner had with the former Liberian dictator, Charles Taylor, occurred several years ago and was not the basis of his criminal conviction, and the prisoner's release into the general population would have minimal impact on guards, other inmates, and prison resources. (Special Housing Unit, Metropolitan Correctional Center, New York)

U.S. District Court
TRANSFER

U.S. v. Jones, 869 F.Supp.2d 373 (E.D.N.Y. 2012). After a defendant, convicted of racketeering and racketeering conspiracy, conspiracy to distribute marijuana, use of a firearm in furtherance of the distribution conspiracy, and four instances of small-scale marijuana distribution, but found not guilty of charges relating to a murder, was sentenced, he filed a motion challenging the decision of the federal Bureau of Prisons (BOP) to classify his security level as "high" and designate him for incarceration at a high-security facility. The district court held that the remedy for the inmate's alleged misclassification lay primarily with the BOP. The court noted that the classification and designation of inmates is a matter within BOP's sole discretion. According to the court, although a district court has habeas jurisdiction to address the execution of a sentence, it does not have jurisdiction over a habeas petition challenging the petitioner's classification by the Bureau of Prisons. (United States Penitentiary, Big Sandy, Kentucky)

U.S. Appeals Court
GOOD-TIME CREDIT
SENTENCE

Waddell v. Department of Correction, 680 F.3d 384 (4th Cir. 2012). A district court dismissed a prisoner's habeas petition as time-barred, and, in the alternative, denied the petition on its merits, and the petitioner appealed. The appeals court affirmed. The appeals court held that the state corrections department's practice of applying earned good time credits for certain identified purposes, but not for the purpose of reducing a prisoner's life sentence did not give rise to a due process protected liberty interest in a life sentence reduced by good time credits. The court also held that the corrections department's failure to utilize the prisoner's good time credits to reduce his life sentence under the eighty-year rule did not give rise to an ex post facto claim. (North Carolina Department of Correction)

U.S. District Court
HABEAS CORPUS
RELIEF
RELEASE DATE

Wiley v. Buncombe County, 846 F.Supp.2d 480 (W.D.N.C. 2012). A pretrial detainee brought an action under § 1983 and § 1985 against a county, sheriff, jail, and court official, alleging that the defendants unlawfully subjected him to multiple periods of involuntary commitment and failed to take proper action on a state habeas corpus petition that he filed challenging the periods of commitment. The defendants moved to dismiss. The district court granted the motion. The court held that: (1) the detainee could not maintain a § 1983 action challenging the terms of his confinement; (2) the clerk had quasi-judicial immunity from the pretrial detainee's § 1983 claim; (3) the jail was not a "person" subject to suit under § 1983; (4) the county could not be liable to the pretrial detainee under § 1983 for the actions of the sheriff; and (5) the county could not be liable to the pretrial detainee under § 1983 for the actions of the county clerk. The court noted that under North Carolina law, the county had no control over the sheriff's employees and/or control over the jail, and therefore county could not be liable to the detainee under § 1983 for the actions of the sheriff or those of his detention officers for events that occurred at a jail operated by the sheriff. (Buncombe County Detention Facility, North Carolina)

U.S. Appeals Court
SEX OFFENDER

Wilson v. Flaherty, 689 F.3d 332 (4th Cir. 2012). An ex-convict petitioned for a writ of habeas corpus to challenge his state rape conviction after he had fully served his sentence, alleging that the sex offender registration requirements of Virginia and Texas law imposed sufficiently substantial restraints on his liberty so as to amount to custody. The district court dismissed the petition for lack of subject matter jurisdiction, but granted a certificate of appealability (COA). The petitioner appealed. The appeals court affirmed, finding that sex offender registration requirements did not place a sex offender in custody for the purposes of federal habeas jurisdiction, since they did not constitute physical restraints. According to the court, the requirements did not disincentivize moving by making it more onerous for offender to live in other places because registration and notification requirements were the same from state to state, and the particularized collateral consequences stemming from the way that states and individuals have reacted to persons who have been convicted of sex offenses were same as the collateral consequences generally faced by other persons convicted of felony. (Virginia)

2013

U.S. Appeals Court
HABEAS CORPUS
RELIEF

Biggs v. Secretary of California Dept. of Corrections and Rehabilitation, 717 F.3d 678 (9th Cir. 2013). After California's Governor reversed the parole board's decision finding the petitioner suitable for parole, the petitioner sought habeas relief, alleging that retroactive application of an interim change to the California Constitution violated the Ex Post Facto Clause of the U.S. Constitution. The district court denied relief and the petitioner appealed. The appeals court affirmed. The court held that the federal habeas court did not unreasonably apply clearly established federal law in determining, without an as-applied analysis of the significance of the risk of increased punishment, that retroactive application of the interim change to the California Constitution giving the Governor final say over grants of parole, did not violate the Ex Post Facto Clause. (California Department of Corrections and Rehabilitation, Parole Hearing Board)

U.S. Appeals Court DISCIPLINE DUE PROCESS GOOD-TIME CREDIT	<p><i>Denny v. Schultz</i>, 708 F.3d 140 (3rd Cir. 2013). A federal prisoner petitioned for a writ of habeas corpus challenging findings made by Disciplinary Hearing Officer (DHO) that he had possessed weapons in violation of a prison regulation and sanctioned him with forfeiture of 40 days of good time credit and the imposition of 60 days in disciplinary segregation. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that the DHO did not violate the federal prisoner's due process rights when it found that the prisoner had committed the prohibited act of "Possession of a Weapon," on the basis that two homemade shanks had been found in a cell that he shared with another prisoner. The court noted that, although those weapons may have belonged to his cellmate, all prisoners had an affirmative responsibility to keep their "area" free from contraband and the collective responsibility theory applied. According to the court, a prisoner serving a term of imprisonment of more than one year had a liberty interest in good time credit that was protected by Fourteenth Amendment, since he had statutory right to receive credit toward his sentence for good conduct. But the court noted that on a claim of loss of good time credits through a disciplinary action, though the "some evidence" standard is a standard of appellate review and not a "burden of proof," a reviewing court need only find that a decision by a Disciplinary Hearing Officer (DHO) had "some basis in fact" in order to affirm the decision as comporting with the Due Process Clause. (Federal Correctional Institution, Fairton, New Jersey)</p>
U.S. District Court ALIEN BAIL	<p><i>Gordon v. Johnson</i>, 991 F.Supp.2d 258 (D.Mass. 2013). An alien, a lawful permanent resident who was subjected to mandatory detention pending removal five years after his arrest for narcotics possession, petitioned for a writ of habeas corpus on his own behalf and on behalf of a class of similarly situated individuals, seeking an individualized bond hearing to challenge his ongoing detention. The government moved to dismiss. The district court allowed the petition, finding that the phrase "when the alien is released" in the statute authorizing mandatory detention of criminal aliens meant "at the time of release," and that the petitioner was entitled to a bond hearing for consideration of the possibility of his release on conditions. (Franklin County Jail and House of Correction, Secretary of the Department of Homeland Security, Sheriff of Bristol County, Sheriff of Plymouth County, Sheriff of Suffolk County, Massachusetts)</p>
U.S. Appeals Court GOOD TIME	<p><i>Grandberry v. Keever</i>, 735 F.3d 616 (7th Cir. 2013). A state prisoner petitioned for federal habeas relief, challenging a prison disciplinary action resulting in the loss of his "good-time" credit that would extend his period of incarceration by 30 days. The district court denied the petition and the prisoner appealed. The appeals court held that the prisoner was not required to seek a certificate of appealability (COA) before appealing the denial of his petition for habeas relief. The court allowed the appeal to go forward. (Plainfield Correctional Facility, Indiana)</p>
U.S. Appeals Court JUVENILE SENTENCE	<p><i>In re Pendleton</i>, 732 F.3d 280 (3rd Cir. 2013). Prisoners who were convicted as juveniles applied for leave to file second or successive habeas petitions based on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. The appeals court granted the applications. The court held that prisoners made a prima facie showing that the new constitutional rule regarding imposition of life sentences on juvenile offenders was retroactive. (Pennsylvania Department of Corrections)</p>
U.S. District Court ACCESS TO COURTS ALIEN BAIL DUE PROCESS	<p><i>Johnson v. Orsino</i>, 942 F.Supp.2d 396 (S.D.N.Y. 2013). An alien, a native of Jamaica, filed a habeas petition challenging his detention in the custody of the Bureau of Immigration and Customs Enforcement (ICE) pending final determination of his removal proceedings. The district court denied the petition. The court held that the alien, who was deportable by reason of having committed a statutorily enumerated drug offense, was subject to the Immigration and Nationality Act's (INA) mandatory detention provision even though he was not taken into custody by an ICE until nearly four years after he was released from criminal custody. The court found that the fifteen-month detention of the alien during removal proceedings, without an individualized bond hearing, was not unreasonably long in violation of due process, and that the public-safety concern of risk of flight justified continued detention of the alien. (Orange County Jail, New York)</p>
U.S. District Court ACCESS TO COURT ALIEN BAIL	<p><i>Pujalt-Leon v. Holder</i>, 934 F.Supp.2d 759 (M.D.Pa. 2013). A detainee of the Bureau of Immigration and Customs Enforcement (ICE) filed a petition for a writ of habeas corpus, challenging ICE's determination that he was subject to mandatory detention and seeking bond hearing. The court held that the detainee was entitled to bond hearing. According to the court, clear unambiguous language demonstrated that Congress intended to give the Attorney General the authority of mandatory detention only if the government took an alien immediately when the alien was released from custody resulting from enumerated offense. (Bureau of Immigration and Customs Enforcement, Pennsylvania)</p>
U.S. Appeals Court ACCESS TO COURTS STATUTE OF LIMITATIONS	<p><i>Richards v. Thaler</i>, 710 F.3d 573 (5th Cir. 2013). After his Texas conviction for possession of a cellular telephone while an inmate of a correctional facility was affirmed, a prisoner sought federal habeas relief. The district court dismissed the petition as time-barred. The petitioner appealed. The appeals court reversed and remanded. The appeals court held that the prison mailbox rule applied to the petitioner's filing of his state post-conviction application, and thus the application was deemed to have been filed on the date he turned the application over to prison authorities to be filed, and not on the date the application was stamped received by the clerk of the court. (Texas Department of Criminal Justice, Correctional Institutions Division)</p>
U.S. Appeals Court ALIEN BAIL DUE PROCESS	<p><i>Rodriguez v. Robbins</i>, 715 F.3d 1127 (9th Cir. 2013). Aliens subject to detention pursuant to federal immigration statutes brought a class action against Immigration and Customs Enforcement (ICE) and others, challenging prolonged detention without individualized bond hearings and determinations to justify their continued detention. The district court entered a preliminary injunction requiring the holding of bond hearings before an immigration judge (IJ). The government appealed. The appeals court affirmed. The court held that: (1) the statute authorizing the Attorney General to take into custody any alien who is inadmissible or deportable by reason of having committed certain offenses for as long as removal proceedings are "pending" cannot be read to</p>

authorize mandatory detention of criminal aliens with no limit on the duration of imprisonment; (2) aliens subject to prolonged detention were entitled to bond hearings before IJs; (3) irreparable harm was likely to result from the government's reading of the immigration detention statutes as not requiring a bond hearing for aliens subject to prolonged detention; and, (4) the public interest would benefit from a preliminary injunction. The court ruled that the class was comprised of all non-citizens within the Central District of California who: (1) are or were detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review, (2) are not and have not been detained pursuant to a national security detention statute, and (3) have not been afforded a hearing to determine whether their detention is justified. (Los Angeles Field Office of ICE, California)

U.S. District Court
ALIEN
BAIL
ACCESS TO COURTS

Rosciszewski v. Adducci, 983 F.Supp.2d 910 (E.D.Mich. 2013). A lawful permanent resident (LPR) petitioned for a writ of habeas corpus, challenging his continued detention in a county jail without a bond hearing, upon the recent reopening of his deportation case after it lay dormant for 15 years. The district court granted the petition. The district court held that the District Director of Immigration and Customs Enforcement (ICE) in the district in which the alien was being detained was the proper respondent, not the warden of the jail in which the alien was being held. The court found that the provision of the Immigration and Nationality Act (INA) that required mandatory detention of a criminal alien during the pendency of removal proceedings did not apply to the alien, a citizen of Canada and a lawful permanent resident (LPR), who had been taken into immigration custody 15 years after his deportation case had lay dormant, and, thus, the alien was entitled to an individualized bond hearing before an immigration judge. (Calhoun County Jail, Michigan)

U.S. District Court
ALIEN
BAIL

Straker v. Jones, 986 F.Supp.2d 345 (S.D.N.Y. 2013). An alien, who had been detained by the Department of Homeland Security (DHS) under a statute that called for mandatory detention by DHS of any alien who had been convicted of certain crimes “when the alien is released,” petitioned for a writ of habeas corpus ordering the administrator of a correctional facility to provide the alien with a bond hearing. The district court granted the petition. The court noted that the detained alien was not required to exhaust administrative remedies, by making an argument before an Immigration Judge that he had not been “released,” within the meaning of the statute, before making such argument before the district court on a petition for habeas corpus, since making such an argument before an Immigration Judge would have been futile, as the Immigration Judge would have been bound to follow a contrary precedent from the Board of Immigration Appeals (BIA). (Orange County Correctional Facility, New York)

2014

U.S. District Court
PAROLE
CREDIT FOR TIME
SERVED

Bennett v. United States Parole Commission, 41 F.Supp.3d 47 (D.D.C. 2014). A District of Columbia (D.C.) prisoner petitioned for a writ of habeas corpus, arguing that he was denied due process during a parole revocation proceeding, and that his custody was illegal because the case supporting his parole violation was dismissed on a finding of no probable cause, and because his sentence had expired. The district court denied the motion, finding that credit for the time prisoner served while on parole was rescinded upon each parole revocation. (United States Parole Commission, and D.C. Correctional Treatment Facility)

U.S. Appeals Court
GOOD TIME
DISCIPLINE

Grandberry v. Smith, 754 F.3d 425 (7th Cir. 2014). A state prisoner filed a petition for a writ of habeas corpus, challenging the revocation of 30 days of his good-time credits upon his conviction of an administrative offense of possession of an electronic device. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions. The court held that the revocation of the prisoner's good-time credits was not supported by some evidence, where there was no evidence that the prisoner used a computer to download forms and documents that he was not told to by a prison employee. (Putnamville Correctional Facility, Indiana)

U.S. Appeals Court
SEGREGATION
TRANSFER

Griffin v. Gomez, 741 F.3d 10 (9th Cir. 2014). A state inmate filed a petition for a writ of habeas corpus challenging his placement in a security housing unit (SHU). After the writ was issued, the district court ordered the state to release the inmate from segregated housing conditions, and the state appealed. The appeals court vacated, reversed, and remanded. The appeals court held that the district court abused its discretion by finding that the state had violated its order issuing a writ of habeas corpus requiring the state to release the inmate from the facility's security housing unit (SHU). According to the court, the state subsequently placed the inmate in the facility's administrative segregation unit (ASU) and then in another facility's SHU. The court noted that the inmate had been released into federal custody before the order was issued, his placement in ASU after he was released from federal custody pending evaluation of his gang status was standard procedure, and the inmate was validated as an active gang member and placed in other SHU. According to the court, the district court improperly impeded state prison management. (Pelican Bay State Prison, California)

U.S. Appeals Court
DISCIPLINE

Neal v. LaRiva, 765 F.3d 788 (7th Cir. 2014). A federal prisoner filed a habeas corpus petition alleging prison officials sanctioned him without due process for violating a prison rule forbidding the forging of any document, article of identification, money, security, or official paper. The district court denied the petitioner's motion to stay and to compel arbitration, and denied the petition on the merits. The petitioner appealed. The appeals court affirmed, finding that the Bureau of Prisons was not required to arbitrate the prisoner's habeas claim, and the petitioner's repeated flouting of his duty to be honest with the court warranted a fine and referral to the United States Attorney for possible prosecution for perjury. The appeals court opened its decision by asserting that the detainee “...seems unable to resist dishonesty.” (Federal Correctional Institution, Terre Haute, Indiana)

U.S. District Court
ALIEN
ACCESS TO COURTS
DUE PROCESS

Reid v. Donelan, 2 F.Supp.3d 38 (D.Mass. 2014). Following the grant of a detainee's individual petition for habeas corpus, and the grant of the detainee's motion for class certification, the detainee brought a class action against, among others, officials of Immigration & Customs Enforcement (ICE), challenging the detention of individuals who were held in immigration detention within the Commonwealth of Massachusetts for over six months and were not provided with an individualized bond hearing. The detainee also moved, on his own behalf, for a permanent injunction prohibiting the defendants from shackling him during immigration proceedings absent an individualized determination that such restraint was necessary. The defendants cross-moved for summary judgment. The district court granted the defendants' motion. The court held that an individual assessment is required before a detainee may be shackled during immigration proceedings, but that the individual assessment performed by ICE satisfied the detainee's procedural due process rights, such that an assessment by an independent Immigration Judge was unnecessary in the detainee's case. The court denied the motion for an injunction, finding that the detainee would not suffer irreparable harm absent a permanent injunction. The court noted that the detainee had an interest in preservation of his dignity, but ICE had safety concerns about his immigration proceedings, including the logistical issues of escorting the detainee through multiple floors and public hallways, and an Immigration Judge would be unlikely to overturn a decision by ICE to shackle the detainee, given the detainee's extensive criminal history. (Immigration and Customs Enforcement, Massachusetts)

2015

U.S. Appeals Court
DISCIPLINE
GOOD TIME

Austin v. Pazera, 779 F.3d 437 (7th Cir. 2015). A state prisoner petitioned for federal habeas relief, alleging that a disciplinary proceeding had denied him due process of law, primarily by convicting him on the basis of insufficient evidence. The district court denied the petition and the prisoner appealed. The appeals court reversed, finding that evidence did not support the disciplinary determination that the inmate was guilty of attempted trafficking in tobacco. According to the court, the prison disciplinary hearing officer's finding that the inmate was guilty was not supported by even "some evidence," and, thus, the subsequent revocation of his good time credit and other imposed disciplinary sanctions violated due process. The inmate's punishment consisted of losing 60 days of good-time credit which increased his period of imprisonment by 60 days, being demoted from "credit class 1" to "credit class 2." Inmates in the first class earn one day of good time credit for each day of imprisonment, while inmates in the second class earn one day of credit for every two days of imprisonment. The inmate was also given 20 hours of extra work duty, and denied access to the prison commissary for 25 days. (Indiana Department of Corrections)

U.S. Appeals Court
DUE PROCESS
SENTENCE

Elmore v. Sinclair, 799 F.3d 1238 (9th Cir. 2015). After affirmance of a state prisoner's murder conviction pursuant to a guilty plea, and his death sentence following a penalty-phase jury trial, the prisoner petitioned for federal habeas relief. The district court denied relief and the prisoner appealed. The appeals court affirmed. The court held the prisoner was not prejudiced by being shackled for the first day of jury selection for the penalty phase. According to the court, even assuming that visible shackling of the defendant violated due process, the defendant was not prejudiced because the nature of the defendant's crime was a gruesome and violent murder, the defendant had agreed, as part of the defense strategy, to show his acceptance of responsibility, and to appear before the jury in jail clothing for the entire penalty phase, the first impression created by the defendant's shackling was partly the point of the defense strategy, and for almost three full weeks the defendant did not appear in shackles before the jury that issued the death sentence. (Whatcom County, Washington)

U.S. Appeals Court
GOOD TIME
SENTENCE

Hinojosa v. Davey, 803 F.3d 412 (9th Cir. 2015). A state prisoner petitioned for federal habeas relief, challenging a state statutory amendment modifying the credit-earning status of prison-gang members and associates in segregated housing, so that such prisoners could no longer earn any good-time credits that would reduce their sentences. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions to the district court. The court held that the amendment disadvantaged the offenders it affected by increasing the punishment for their crimes, an element for an ex post facto violation. The court noted that even if a prisoner could easily opt out of his prison gang, a prisoner who continued doing what he was doing before the statute was amended would have his prison time effectively lengthened. (Special Housing Unit, Corcoran State Prison, California)

U.S. District Court
PAROLE

Knighen v. United States Parole Commission, 105 F.Supp.3d 30 (D.D.C. 2015). A parolee sentenced under the Uniform Code of Military Justice (UCMJ) brought an action, construed as a petition for a writ of habeas corpus, challenging the United States Parole Commission's refusal to terminate his supervision. The district court denied the motion, finding that the Parole Commission did not have the authority to grant an early termination of the parolee's supervision, and that a rational basis in the record supported denial of the parolee's request for early termination of parole supervision. (U.S. Disciplinary Barracks, Fort Leavenworth, Kansas)

U.S. District Court
GOOD TIME

Mills v. Holmes, 95 F.Supp.3d 924 (E.D. Va. 2015). A state inmate, proceeding pro se, brought a § 1983 action against various prison employees, alleging violations of this Fourteenth Amendment due process rights in reducing his good conduct allowance class level. The defendants moved for summary judgment and the district court granted the motion. The court converted the inmate's action into a habeas corpus proceeding and ruled that the inmate did not have a protected liberty interest under Virginia law in his good conduct allowance earning level. The court noted that a state law stated that inmates "may be entitled to good conduct allowance," and while state regulations provided objective criteria for decision-making, the results were not guaranteed since the decisions could be rejected in another hearing in which officials had discretion, and any action was subject to approval by another official. (Deep Meadow Correctional Center, Virginia)

U.S. Appeals Court ALIEN BAIL	<p><i>Rodriguez v. Robbins</i>, 804 F.3d 1060 (9th Cir. 2015). A petitioner sought a writ of habeas corpus, on behalf of himself and a class of aliens detained during immigration proceedings for more than six months without a bond hearing, seeking injunctive and declaratory relief providing individualized bond hearings with the burden on the government, certification of the class, and appointment of class counsel. The district court denied the petition. The petitioner appealed. The appeals court reversed and remanded. On remand, the district court entered a preliminary injunction and the government appealed. The appeals court affirmed. The district court then granted summary judgment to the class and entered a permanent injunction, and the parties appealed. The appeals court affirmed in part and reversed in part. The court held that the aliens were entitled to automatic individualized bond hearings and determinations to justify their continued detention. The court ruled that the government had to prove by clear and convincing evidence that an alien was a flight risk or a danger to the community to justify denial of a bond at the hearing. (Immigration and Customs Enforcement, Los Angeles, California)</p>
U.S. District Court ALIEN BAIL DUE PROCESS	<p><i>Rodriguez v. Shanahan</i>, 84 F.Supp.3d 251 (S.D.N.Y. 2015). An alien who was subjected to mandatory detention pending removal proceedings, seven years after his criminal detention for narcotics possession, petitioned for a writ of habeas corpus, seeking an individualized bond hearing to challenge his ongoing detention by the Department of Homeland Security. The district court granted the petition, finding that the alien was entitled to a bond hearing pending removal proceedings and that his continued detention violated his Fifth Amendment due process rights. (Department of Homeland Security, New York)</p>
U.S. Appeals Court GOOD TIME DISCIPLINE	<p><i>Santiago-Lugo v. Warden</i>, 785 F.3d 467 (11th Cir. 2015). A prisoner filed a habeas corpus petition, seeking relief on due process grounds for disciplinary sanctions he received for possession of a cellular telephone, which included revocation of his good time credits. The district court denied the prisoner's petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was given sufficient notice of the charges against him, as required by due process. (Federal Correctional Complex at Coleman Medium Prison, Florida)</p>
U.S. Appeals Court JUVENILE SENTENCE	<p><i>Thompson v. Roy</i>, 793 F.3d 843 (8th Cir. 2015). A juvenile who was convicted of first degree premeditated murder and first degree murder while committing a robbery, was sentenced to two consecutive sentences of mandatory life imprisonment without the possibility of parole. The juvenile filed a petition for a writ of habeas corpus, which the district court denied. The juvenile appealed. The appeals court affirmed. The court found that while imposition of a sentence of mandatory life imprisonment without possibility of parole for a juvenile homicide offender violated the Eighth Amendment, it did not apply retroactively to cases on collateral review. (Minnesota)</p>

SECTION 23: HYGIENE- PRISONER, PERSONAL

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1970

U.S. District Court
BEDDING
Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). Fact that mattresses issued to inmates were not cleaned contributes to court's finding of constitutional violation. Unsanitary condition of jail kitchen contributes to court's finding of constitutional violation. (Orleans Parish Prison, Louisiana)

1971

U.S. Appeals Court
TOILET PAPER
Anderson v. Nossier, 438 F.2d 183 (5th Cir. 1971), cert. denied, 409 U.S. 848 (1971). Inmate-petitioners denied soap, towels, toilet tissue, toilet articles and sanitary napkins contributes to court's finding of constitutional violation. (Mississippi State Penitentiary, Parchman)

U.S. Appeals Court
HAIR
Blake v. Pryse, 444 F.2d 218 (8th Cir. 1971). Regulations covering hair length and facial hair have been held not to raise constitutional issues. Administrators can justify such regulations to achieve purposes of identification, hygiene, discipline and prevention of concealment of contraband. (Federal Correctional Institute, Sandstone, Minnesota)

U.S. District Court
HYGIENE ITEMS
HOT WATER
LAUNDRY
Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). There must be hot and cold water for bathing. Clean towels and washcloths, soap, toothbrush, toothpaste, and shaving gear shall be provided. Clean linens shall be provided regularly and clothing shall be laundered and exchanged weekly. Prisoners shall be dressed in jail clothing. (Lucas County Jail, Ohio)

1972

U.S. District Court
BEDDING
LAUNDRY
Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Every existing mattress shall be disposed of and new mattresses procured, replaced annually, and linen shall be laundered at least once a week. Court ordered that all prisoners be clothed in prison uniforms so that inmates could be readily distinguished from employees and visitors. Each defendant not having a change of clothing would be provided one. (Orleans Parish Prison, Louisiana)

U.S. District Court
HAIR
Smith v. Sampson, 349 F.Supp. 268 (D. N.H. 1972). Right to wear one's hair as one wishes is protected by due process. Institution's justification for hair policy: hygiene, identification, and security, do not necessitate cutting of detainees' hair. Compulsory haircut rule for detainees violates due process. (New Hampshire State Prison)

1973

U.S. District Court
CLOTHING
SHOWERS
INDIGENT
PRISONERS
Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Indigent inmates confined longer than a month will be provided with underwear. Inmates in isolation shall receive showers as frequently as other inmates. Isolation may not extend beyond fourteen days, unless voluntary or certified in writing by a medical doctor as medically necessary. Inmates' families or friends will be allowed to provide them with underwear. (Jackson County Jail, Kansas City, Missouri)

- U.S. District Court
LAUNDRY
HYGIENE ITEMS
SHAVING
- Hamilton v. Love, 358 F.Supp. 338 (E.D. Ark. 1973). Detainee's clothing will be laundered at least once a week. The court will not prescribe specific implements and amounts, but detainees must receive sufficient toilet articles to maintain a reasonable state of personal cleanliness, including periodic shaving. (Palaski County Jail, Arkansas)
- U.S. District Court
SHOWERS
CLOTHING
LAUNDRY
- Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974). Detainees are to be given daily showers. Institutional clothing is to be given to all detainees who need it. Free laundry service must be given to detainees at least once a week. (Suffolk County Jail, Massachusetts)
- U.S. District Court
BEDDING
LAUNDRY
- Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Clean mattress covers, blankets and towels will be provided upon admission and cleaned, washed or repaired at reasonable intervals. (St. Louis County Jail, Missouri)
- 1975
- U.S. District Court
CLOTHING
- Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). Inmates shall be provided a clean change of clothing every day. (Harris County Jail, Texas)
- U.S. District Court
LAUNDRY
- Campbell v. McGruder, 416 F.Supp. 100 (D. D.C. 1975). Clean clothing, clean towels, and clean bed linen are to be provided at least once a week. (D.C. Jail)
- U.S. Appeals Court
HYGIENE ITEMS
WATER
- Kimbrough v. O'Neil, 523 F.2d 1057 (7th Cir. 1975), aff'd, 545 F.2d 1059 (7th Cir. 1976). It is unconstitutional to deprive an inmate in solitary confinement of the rudimentary implements of personal hygiene, such as toilet paper, soap, towels, and washing water. (St. Clair County Jail, Illinois)
- U.S. District Court
HYGIENE
- Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Adequate provision for personal hygiene contributes to the absence of cruel and unusual punishment. (York County Prison, Pennsylvania)
- 1976
- U.S. District Court
CLOTHING
LAUNDRY
SHOWERS
ISOLATION
- Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Inmates without adequate clothing shall be furnished clothing within eight hours of booking and shall have available a daily change of clean clothes. Clean towels and washcloths shall be issued to inmates within eight hours of booking and shall be frequently laundered. Inmates shall not be housed in cells which do not have showers except isolation cells, and inmates in isolation cells or cells without working showers shall receive at least five showers a week. (Escambia County Jail, Pensacola, Florida)
- U.S. District Court
CLOTHING
HYGIENE ITEMS
- Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976), aff'd, 537 F.2d 1 (1st Cir. 1976) aff'd, 551 F.2d 877 (1st Cir. 1977). Failure to provide adequate clothing is unconstitutional. Failure to provide articles for detainee's personal hygiene violates equal protection and due process. (San Juan District Jail)
- U.S. District Court
CLOTHING
- Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). A committee should be designated to see that clean clothing and bedding are received once a week. (Jefferson County Jail, Kentucky)
- 1977
- U.S. District Court
HYGIENE ITEMS
BEDDING
- Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. The court ruled that detainees shall receive upon admission all items which are necessary for personal hygiene, including but not limited to: soap, toothpaste, razor, sanitized mattress and pillow, shirt and pants, clean sheets, blankets and towels. (Platte County Jail, Missouri)
- U.S. District Court
SHOWERS
- Anderson v. Redman, 429 F.Supp. 1105 (D. Del. 1977). Housing of inmates in converted common areas without adequate sanitary facilities violates state statutes and regulations requiring facilities to be sufficient for every inmate to bathe as often as necessary but at least three times a week. (Delaware Correctional Center)
- U.S. District Court
SHOWER
HYGIENE ITEMS
CLOTHING
BEDDING
- Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Each inmate will be afforded an opportunity to shower at least every other day. Standard bath size towels will be provided to each inmate, and each inmate without such will be furnished with soap, toothbrush, toothpaste, and shaving gear in sufficient quantity to allow adequate maintenance of personal hygiene. Sheets will be large enough to allow for shrinkage. Mattress covers or plastic coated mattresses will be provided. All new inmates will be provided with underwear and clothing. (Jackson County Jail, Kansas City, Missouri)

1978

- U.S. District Court
SHOWERS
Lock v. Jenkins, 464 F.Supp. 541 (N.D. Ind. 1978). Provisions of three showers per week are not shown to create a health hazard. (Indiana State Prison, Michigan City, Indiana)
- U.S. Appeals Court
SHOWERS
Preston v. Thompson, 589 F.2d 300 (7th Cir. 1978). Court finds that it was legitimate for administration to discontinue showers in emergency situation. (Pontiac Correctional Center, Illinois)

1980

- State Supreme Court
ISOLATION
Attorney General v. Sheriff of Worcester County, 413 N.E.2d 722 (Mass. 1980). The Massachusetts Supreme Court ordered the Worcester County Jail to comply with Public Health regulations concerning sinks, toilets and beds. The jail contained seven isolation cells which did not have a toilet, sink or raised bed. After a public health official inspected these cells and found them to be in violation of health regulations, jail officials stated that they intended to correct the violations in six of the cells but would keep the seventh as it is for confinement of potentially suicidal inmates. The court determined that county jails are subject to health department inspections and that isolation units are not to be excluded from the scope of health regulations. The court then ruled that the evidence with respect to the danger of suicide fell short of requiring an exception to the regulations. The court stated that indestructible toilet and sink units are available and that such units could not be used by an inmate to injure himself or others. The court then ordered jail officials to install such units to achieve compliance with health code regulations. (Worcester County Jail)
- U.S. District Court
SHOWERS
LAUNDRY
Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations of fungus infested showers do not state a claim upon which relief can be granted. Allegations that inmates are limited to one change of socks, shorts and T-shirts per week do not state a claim upon which relief can be granted. (Attica Correctional Facility, New York)
- U.S. District Court
TOILETS
Hutchings v. Corum, 501 F.Supp. 1276 (W.D. Mo. 1980). Class action is brought challenging the constitutionality of numerous conditions and practices at the county jail. The district court held that: (1) prison authorities' failure to immediately evacuate inmates from any sewage contaminated cell, pending thorough cleaning of cell, violated constitutional rights of inmates subject to that condition; (2) deficiencies in jail, including lack of fire escape, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions. Prison conditions for an unconvicted person are to be judged against due process standards of the fifth and fourteenth amendments and conditions within the penal institution which are unconstitutional for the convicted person under eighth amendment review are likewise an abridgment of due process guarantees afforded unconvicted persons. The claim that financial restrictions have prevented improvements in jail conditions is not a defense to constitutional violations. (Clay County Jail, Missouri)
- U.S. District Court
TOILET
HOT WATER
SINKS
Lightfoot v. Walker, 486 F.Supp. 504 (S.D. Ill. 1980). All cells are to have a working toilet and sink with hot and cold water. (Menard Correctional Center, Menard, Illinois)

1981

- U.S. District Court
TOILET
Heitman v. Gabriel, 524 F.Supp. 622 (W.D. Mo. 1981). In this case against the Buchanan County Jail, the United States District Court ordered that no inmate is to be assigned to a cell used as a communal toilet, and ordered the jail's plumbing to be cleaned and repaired. (Buchanan County Jail, Missouri)
- U.S. Appeals Court
CLOTHING
BEDDING
ISOLATION
Maxwell v. Mason, 668 F.2d 361 (1981). The confinement of a state prisoner in solitary confinement with no clothing other than a pair of undershorts and no bedding other than a mattress as punitive measure violates the eighth amendment. Clothing is a basic necessity of human existence which cannot be deprived in the same manner as a privilege an inmate may enjoy. Any deprivation of basic necessities takes on added importance where it occurs in a condition of solitary confinement. The reason for that resides not solely in the requisites of proper hygiene, but also in the eighth amendment's basic concept supporting the dignity of man. (Nebraska State Penitentiary)
- U.S. District Court
ISOLATION
BEDDING
TOILET PAPER
O'Conner v. Keller, 510 F.Supp. 1359 (D. Md. 1981). Confinement in a strip cell (isolation) does not constitute a per se violation of the eighth amendment. Where the purpose of placing the individual in strip cell was to permit him to calm down after an incident in the institution, the placement was reasonable. However, the continuance of

the placement for two days without providing a mattress, toilet paper, or operational plumbing was unreasonable and violated due process, particularly where the staff providing regular checks of the condition of the inmate had indicated that he was calm and normal. The Court finds that the stay was at least twenty-four hours too long. Guards who failed to act on the reports of proper behavior in isolation are liable. \$200 in damages was awarded. (Maryland Correctional Institution)

1982

State Court
BEDDING
CLOTHING
HYGIENE ITEMS

Hickson v. Kellison, 296 S.E.2d 855 (W.Vir. 1982). General conditions at the Pocahontas County Jail were found to violate constitutional standards by a federal district court, noting that the jail failed to provide the inmates with personal hygiene supplies, bedding and towels, and adequate clean clothing. The court stated that the legislature required counties to maintain jails at reasonable and acceptable standards. (Pocahontas County Jail, West Virginia)

U.S. District Court
ISOLATION
TOILETS
HOT WATER

Strachan v. Ashe, 548 F.Supp. 1193 (D. Mass. 1982). Isolation unit conditions are held unconstitutional. Alleging that conditions of an isolation unit in a county correctional facility in Massachusetts were unconstitutional, the plaintiff brought this Section 1983 action. Although the plaintiff contended that the procedural aspects of the disciplinary proceedings which placed him in isolation, as well as the conditions of isolation were unconstitutional, the court focused on the conditions of the isolation cell. The cell was ten feet by ten feet with no toilet or running water. The plaintiff was permitted to leave his cell only fifteen minutes daily to exercise and to wash with cold water. His only bedding was a mattress on the floor. He was allowed only one blanket, a sheet and pillow. Food served to him was cold. In discussing the lack of plumbing facilities, the court found that conditions of the isolation cell violated minimum state standards, which did not establish a constitutional violation per se, but lack of adequate plumbing facilities has previously been held to a violation of the eighth amendment. The court held that because the defendant supervisors had actual notice of the prison conditions, the administrative negligence of not acting on those conditions rose to the level of deliberate indifference in this case. The defendants argued that they were entitled to "good faith immunity," that they could not have been expected to know that they were violating the constitutional rights of the plaintiff. The court rejected this argument, finding that the inmate clearly had a constitutional right to adequate and hygienic means of disposing of his bodily waste. (Hampden County House of Corrections, Massachusetts)

1983

State Court
TOILETS
HOT WATER

Michaud v. Sheriff of Essex County, 458 N.E.2d 702 (Mass. 1983). Court orders inmates out of cells until toilets and sinks are installed. Cells in several Massachusetts jails are not to be used until flushing toilets and hand-washing sinks with hot and cold running water are installed, according to a state court ruling. Existing toilet facilities in the cells consist of metal or plastic buckets without lids, shared by several inmates. Emptied only once daily, inmates are subject to continually smelling the odor of their wastes. The cells are not to be used until the ordered improvements are made. (Essex Co. Jail/ House of Corr., Lawrence, Massachusetts)

1985

U.S. Appeals Court
CLOTHING
SHOWERS

Hoptowit v. Spellman, 753 F.2d 779 (9th Cir. 1985). Inmates brought an action challenging conditions of confinement in a state prison system. On remand, 682 F.2d 1237, the United States District Court entered judgment finding conditions in violation of the eighth amendment and ordered relief; the state appealed. The court of appeals held that: inadequate lighting, vermin infestation, substandard fire prevention, and safety hazards in the prison violated minimum requirements of the eighth amendment. The order for relief was overbroad in requiring provision of adequate food and clothing where there were no findings of inadequate food and clothing. The plumbing at the state prison which was in such disrepair as to deprive inmates of basic elements of hygiene and which seriously threatened inmates' physical and mental well-being amounted to cruel and unusual punishment under the eighth amendment. Vermin infestation at the state prison, considered in light of unsanitary conditions such as standing water, flooded toilets and sinks, and dank air, was unnecessary and wanton infliction of pain proscribed by the eighth amendment. Lack of adequate ventilation and air flow which undermined the health of prison inmates and the sanitation of the prison violated the minimum requirement of the eighth amendment. The failure to provide adequate cell cleaning supplies in light of overall squalor at the state prison violated the eighth amendment. (State Penitentiary, Washington)

U.S. District Court
TOILET
SHOWER

Miles v. Bell, 621 F.Supp. 51 (D.C.Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy. Most of the plaintiffs' proof on the issue was based on comparisons between illness rates in dormitories and other housing methods such as cubicles or single or double cells. Testimony did show higher levels of complaints and a higher level of illness among inmates housed in the open dorms. A doctor testified that the installation of cubicles could correct many of these problems. In fact, the defendants had corrected the situation by installing cubicles, rendering much of the pretrial detainees' complaint moot. The cubicles mitigate the spread of disease, as well as afford privacy, testified the doctor. He said that the decrease in stress would likely improve both the physical and mental states of the inmates. Although there was no testimony as to what effect the cubicles had on ventilation, the court found no violation on the matter. The barriers were likely to decrease the effects of smoking and body odor of other inmates. The inmates complained of drafts if windows were left open and of stifling heat if left closed. The living units made up of cubicles were not challenged by the inmates. The court also found no constitutional violation in that the number of toilets and showers did not conform to the standards set by the American Correctional Association (ACA) and by the American Public Health Association (APHA). The ACA advised one toilet and shower facility for every eight inmates, and the APHA advised one toilet for every eight inmates and one shower for every fifteen inmates. The defendants provided one toilet for every ten to fifteen inmates, and one shower for every fourteen to twenty-four inmates, depending on the housing unit. These figures were nearly twice that advised. Still, the court found no violation absent a showing that waiting in line led to either physical or mental problems. Sanitary conditions were not challenged. (Federal Correctional Institution at Danbury, Connecticut)

U.S. Appeals Court
SHOWERS

Walker v. Mintzes, 771 F.2d 920 (6th Cir. 1985). In reconsidering security measures following a riot, prison officials made some changes in policy at several prisons within the state, including placing limitations on the inmates' privileges. It was alleged that the changes would become the "new normal" at the prison, even after the emergency lifted. The issue was whether the specific limitations violated the inmates' rights, not the fact that changes were made. For the most part, general population inmates were to receive three showers per week while those in administrative segregation were to receive one per week. (Marquette Branch Prison, State Prison of Southern Michigan at Jackson, Michigan Reformatory at Ionia)

1986

U.S. District Court
HAIR

Fromer v. Scully, 649 F.Supp. 512 (S.D.N.Y. 1986). An inmate brought action against prison officials to challenge the constitutionality of the directive that limited the length of a beard to one inch. The district court held that: (1) the inmate had established a sincere religious belief in growing a beard, and (2) the directive that limited the length of the inmate's beard to one inch was greater than necessary to effectuate governmental objectives of identification of inmates, control of contraband, safety, and hygiene, and, therefore, the restriction violated the inmate's free exercise rights. The inmate's religious practice of growing a beard longer than one inch was not presumptively dangerous, but was totally denied by prison directive that limited length to one inch, and, therefore, required prison officials to show that application of a beard restriction was necessary to further important governmental interest, and that limitations on religious freedoms occasioned by restriction were not greater than necessary to effectuate the governmental objective involved. (Department of Correctional Services, New York)

U.S. District Court
BEDDING
HOT WATER
SHOWERS
SINKS
TOILETS

Jackson v. Gardner, 639 F.Supp. 1005 (E.D.Tenn. 1986). Inmates of a county jail brought a Section 1983 action challenging the constitutionality of conditions of confinement. After resolution of some of the conditions complained of, and stipulation as to others, the district court held that prison conditions under which an average inmate was confined twenty-four hours a day in a physically dilapidated, insect infested, dimly lit, poorly ventilated area averaging under twenty square feet per inmate, without any available recreation or diversion other than some reading or letter writing, sharing a shower which might not have hot water with twelve to fourteen others, sharing a sink and toilet with three or four others, and possibly sleeping on an unsanitary floor, or within inches of a toilet, in clothing which may not have been recently washed, constituted cruel and unusual punishment. (Sullivan County Jail, Tennessee)

U.S. District Court
BEDDING
CLOTHING

McClung v. Camp County, Tex., 627 F.Supp. 528 (E.D. Tex. 1986). District court rules against all prisoner claims in conditions of confinement suit against jail. An inmate who had been incarcerated in a county jail brought action against the county and various county officials alleging that conditions in jail violated his constitutional rights. The federal district court held that: (1) evidence supported a finding that conditions placed on the inmate's physical exercise at the jail did not constitute a violation of inmate's constitutional rights; (2) evidence supported a finding that inmate's constitutional rights were not violated by alleged failure to provide clean bedding, clothing and toiletries; (3) evidence was sufficient to support a finding that jail fire safety conditions did not violate inmate's constitutional rights; and (4) administering insulin to a diabetic inmate three times daily rather than four times daily did not violate the inmate's rights. Evidence that county jail cells had enough room for inmates to exercise, and that the inmate's health had not suffered during short periods he was confined in the jail supported the court's finding that conditions did not constitute a violation of inmate's constitutional rights. (Camp County Jail, Texas)

1987

U.S. District Court
SHOWERS

Davenport v. DeRobertis, 653 F.Supp. 649 (N.D. Ill. 1987), cert. denied, 488 U.S. 908. Inmates brought a class action on behalf of all present and future inmates at the maximum security prison confined to segregation for ninety or more consecutive days, alleging deprivation of their constitutional rights, against present and former wardens of the prison and the director of the Illinois Department of Corrections and seeking injunctive relief. The district court held that the inmates confined in segregation in maximum security prison for a period of ninety or more consecutive days were entitled to injunctive relief ordering that they be allowed, except during temporary emergencies and lockdowns, three showers per week. Permitting inmates confined to segregation in a maximum security prison only one shower per week constituted cruel and unusual punishment. (Stateville Correctional Center, Illinois)

U.S. District Court
HAIR

Reed v. Faulkner, 653 F.Supp. 965 (N.D. Ind. 1987). An inmate who claimed to belong to a religion called Rastafarian which is a Jamaican sect that have their homeland in Africa, requested to wear his hair long. When an expert witness revealed that wearing long hair was more a matter of choice, rather than a mandate of the religion, the court also noted that the inmate did not wear his beard long which also was a practice of his religion. The court found reason to doubt the inmate's sincerity. Further, aside from the question of sincerity, the court found the prison rules were supported by a security concern because long hair can hide contraband. Also, health and sanitation concerns of lice and infection can be a problem in prisons, as well as the danger of long hair getting caught in machinery and cell doors. (Indiana State Prison)

1988

U.S. Appeals Court
SHOWERS

Davenport v. DeRoberts, 844 F.2d 1310 (7th Cir. 1988), cert. denied, 109 S.Ct. 260. Inmates brought a class action suit against the prison alleging cruel and unusual punishment because they were allowed only one hour per week for exercise and one shower per week. The federal district court granted injunctive relief and allowed three showers per week and five hours out-of-cell exercise per week, except when there was an emergency or a lock down. The court awarded only nominal damages. The Department of Corrections' own medical director testified that four to seven hours outside the cell, and three showers, were the weekly minimum necessary to prevent serious adverse effects on the physical and mental health of inmates confined in what is a form of solitary confinement. The department also argued that each cell contained a wash basin in which the inmate could wash himself as often as he liked and that the cells were large enough for the inmate to engage in various sorts of exercise, including push-ups, sit-ups and running in place. The lower court noted that "we do not suggest that this is always and everywhere the constitutional minima; much less may suffice when the period of incarceration is brief." However, on the issue of showers, the court noted that limiting the number of showers to one a week did not have a serious effect on the mental or physical well-being of the inmates and that "the deprivation merely of cultural amenities is not cruel and unusual punishment." The appeals court agreed, refusing to uphold an order for three showers per week. (Stateville Correctional Center)

U.S. Appeals Court
HYGIENE ITEMS
TOILET PAPER

Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), affirmed, 993 F.2d 1549. An inmate filed a federal civil rights lawsuit against three prison officials, claiming he had been subjected to cruel and unusual punishment seeking \$320,000 in compensatory and punitive damages. The inmate stated that the prison failed to supply him with toilet paper for five days, or with soap, toothpaste or a toothbrush for ten days and he was kept in a "filthy" roach-infested cell. He also complained that during 28 days in a segregation unit he was refused permission to exercise. Since the inmate suffered no physical harm,

but merely some unpleasantness, the federal appeals court found that the defendants' temporary neglect of the prisoner was not intentional and that it did not reach unconstitutional proportions. While the court found that the circumstances of the case demonstrated some neglect and indifference on the prison's part, it concluded that the conditions were temporary and affected only one inmate. Although the inmate was deprived of "yard or recreation time," he could have "improvised temporarily with jogging in place, aerobics, or pushups." (Menard Correctional Center, Illinois)

1989

U.S. District Court
HYGIENE ITEMS
TOILET PAPER

Carver v. Knox County, Tenn., 753 F.Supp. 1370 (E.D. Tenn. 1989). A class action suit was brought on behalf of county jail inmates and pretrial detainees seeking declaratory and injunctive relief concerning conditions of confinement. The district court found that to the extent that the county jail ran out of some toilet articles, there was a violation of both the Eighth and Fourteenth Amendments. The occasional shortage of necessary personal hygiene items was directly related to the overcrowded conditions at the jail. (Knox County Jail, Knoxville, Tennessee)

U.S. District Court
HYGIENE ITEMS

Caudle-El v. Peters, 727 F.Supp. 1175 (N.D. Ill. 1989). A former inmate brought a civil rights action against correctional officers. The district court found that standing alone, the fact that prison officials deprived the inmate of all hygiene materials for six days while in segregation, although unpleasant, did not reach constitutional proportions when it resulted from temporary negligence of the prison officials in implementing otherwise constitutionally acceptable policies. (Sheridan Correctional Center, Illinois)

U.S. District Court
BEDDING
HYGIENE

Fambro v. Fulton County, Ga., 713 F.Supp. 1426 (N.D. Ga. 1989). The court found that the substandard sanitation in the jail was unconstitutional. Jails are constitutionally obligated to provide reasonably adequate sanitation for their inmates. This generally requires control of vermin and insects and clean places for eating, sleeping, and working and, additionally, concerns such areas as food preparation, medical facilities, lavatories, and showers. The substandard sanitation in the county jail endangered the health of sentenced prisoners and pretrial detainees, in violation of the eighth and fourteenth amendments. Food was being prepared in unsanitary surroundings and inmates were being required to live and sleep in and around seeping sewerage and in warm dark places which were not regularly and adequately cleaned, lit or ventilated. The court stated: "At various times heretofore, in an effort to address persistent overcrowding, the court has authorized the sheriff in his discretion to release inmates under a prioritized release order and has imposed a fine of \$100 per day for each inmate sleeping on the floor. Other efforts have been made the county in a timid sort of way to select inmates who might be eligible for release. None of these efforts have succeeded in bringing the population of the jail down." In light of the overcrowding, resulting in unconstitutional operation of the county jail, and failure of other means to reduce jail population, a release order was appropriate remedy. (Fulton County Jail, Georgia)

U.S. District Court
TOILET PAPER

Gilson v. Cox, 711 F.Supp. 354 (E.D. Mich. 1989). A male inmate brought a civil rights action, claiming that a female corrections officer made various sexual advances and physically abused him, verbally abused him, and failed to provide toilet paper upon request. The officer moved for summary judgment, and the district court found that the allegations of verbal abuse did not state a constitutional deprivation actionable in a civil rights action, and the failure to provide toilet paper on request did not violate the constitutional proscription against cruel and unusual punishment. Genuine issues of material fact existed, precluding a summary judgment, on the substantive due process claim based on allegations that the officer grabbed the inmate's genitals and buttocks. The inmate had a liberty interest in "personal bodily integrity" which included the right to be free from sexual abuse. If the inmate could prove that his allegations are true and that the alleged infringement of his bodily integrity is "shocking to the conscience," the court found, a reasonable jury could find a violation of due process rights. (Huron Valley Mens Facility, Michigan)

U.S. Appeals Court
BEDDING
CLOTHING
HYGIENE ITEMS
WATER

Johnson v. Pelker, 891 F.2d 136 (7th Cir. 1989). An inmate brought a civil rights action challenging the conditions of his confinement. The U.S. District Court granted a summary judgment for the defendants, and appeal was taken. The appeals court found that neither an accidental dumping of water on the inmate, nor the denial of his request for dry bedding and clothing, deprived him of constitutional rights. The court also ruled that the inmate's allegation that he had been placed in a cell for three days without running water and in which feces had been smeared on walls, while his request for cleaning supplies and for the water to be turned on were ignored, stated a cause of action for the violation of the inmate's eighth amendment rights. (Menard Correctional Center, Illinois)

1990

State Appeals Court
BEDDING

Williams v. Kelone, 560 So.2d 915 (La.App. 1 Cir. 1990). A prisoner brought a tort action against employees of a prison for damages the prisoner allegedly sustained as a result of having to sleep with a soiled blanket. The district court dismissed the action, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner was not deprived of basic personal hygiene, and thus the prisoner was not deprived of a constitutional right to be free of cruel and unusual punishment. A prison's providing a prisoner, who was placed in administrative lockdown, with a blanket which was assigned to the cell, whether the blanket had been used by a previous prisoner or not, was not a deprivation of basic personal hygiene. The prisoners were given clean sheets upon entering administrative lockdown, and the sheets were cleaned weekly thereafter. The blankets were cleaned two to three times a year and were replaced if they became extremely soiled. In point of fact, there was no evidence showing that the prisoners were subject to cold temperatures which would constitutionally require that they be given any blanket at all. Under these conditions, the furnishing of a soiled blanket was not a deprivation of "basic personal hygiene" constituting cruel and unusual punishment. (State Penitentiary, Angola, Louisiana)

1991

U.S. District Court
ISOLATION
HYGIENE ITEMS
CLOTHING

Johnson v. Williams, 768 F.Supp. 1161 (E.D. Va. 1991). An inmate brought a civil rights action against prison officials, claiming his rights were violated during a prison lockdown. On the officials' motion for summary judgment, the district court found that the inmates' allegations that he was denied rudiments of personal hygiene and was provided with inadequate clothing during lockdown were insufficient to state a civil rights claim based on an Eighth Amendment violation. The inmate did not dispute that he was allowed two showers per week and could place orders for personal hygiene items to make up for the restriction on personal visits to the canteen and did not explain why the clothing was inadequate or indicate what clothing was provided for him during the lockdown. (Powhatan Correctional Center, Virginia)

U.S. Appeals Court
BEDDING
CLOTHING

Porth v. Farrier, 934 F.2d 154 (8th Cir. 1991). A reformatory inmate filed a civil rights action alleging a violation of his Eighth Amendment rights. The U.S. District Court entered judgment for the prison officials and the inmate appealed. The court of appeals found that confinement of the inmate in a strip cell without clothes, bedding, or a mattress for approximately 12 hours was not so inhumane, base or barbaric as to shock one's sensibilities even though the prison officials acted improperly. While clothing and bedding are basic necessities, the court stated, confinement without them can only be determined to be cruel and unusual punishment on the basis of the totality of the circumstances. Prison conditions which only result in discomfort do not amount to cruel and unusual punishment. (Iowa State Men's Reformatory)

U.S. District Court
HYGIENE ITEMS

Scher v. Purkett, 758 F.Supp. 1316 (E.D. Mo. 1991). Inmates who were confined to punitive segregation filed a civil rights action against correctional officials. The U.S. District Court found that the denial of shampoo and deodorant to those inmates was not cruel and unusual punishment, and the lawsuit would be dismissed as frivolous. The court noted that such items as shampoo and deodorant may enhance one's beauty, appearance, and level of personal hygiene, but the denial of these toiletries, however, does not rise to the level of a constitutional violation. (Farmington Correctional Center, Missouri)

1992

U.S. District Court
HYGIENE ITEMS
TOILET PAPER

Williams v. ICC Committee, 812 F.Supp. 1029 (N.D.Cal. 1992). An inmate filed a pro se Section 1983 action against prison officials. The court found that allegations of the prison officials' deliberate denial of toilet paper and soap for an extended period were more significant than a de minimis intrusion and constituted denial of minimal civilized measures of life's necessities so as to state a claim under Section 1983 for violation of the Eighth Amendment. (San Quentin Prison, California)

1993

U.S. District Court
HOT WATER

Matthews v. Peters, 818 F.Supp. 224 (N.D.Ill. 1993). A prison inmate brought an action against employees of the Department of Corrections charging that defendants violated his constitutional rights by depriving him of hot water in his cell for a period of seven months while segregated. On the defendants' motion for judgment on pleadings, the district court found that the prison officials would not be relieved on qualified immunity grounds from having to defend the inmate's lawsuit in view of a showing of deliberate indifference by prison officials in the refusal to cure readily remediable conditions. (Stateville Correctional Center, Illinois)

- U.S. District Court
SINKS
WATER
- McNeal v. Ellerd, 823 F.Supp. 627 (E.D. Wis. 1993). Prisoners who were placed in a cell with a non-functional sink brought a Section 1983 action against prison employees seeking damages and declaratory and injunctive relief, and the prison employees moved to dismiss. The district court found that the prisoners failed to show a serious deprivation of basic human needs and thus were unable to establish a prima facie case that prison conditions violated the Eighth Amendment. The prisoners did not allege that generally unsanitary conditions existed, that the non-functional sink caused particular unsanitary conditions in the cell, or that they were deprived of potable water. (Racine Correctional Institution, Wisconsin)
- U.S. District Court
SHOWERS
- Risdal v. Martin, 810 F.Supp. 1049 (S.D. Iowa 1993). An inmate brought a Section 1983 action against correctional officers, alleging that excessive physical force was used when he was forced to take a shower. The district court found that the inmate failed to establish he was subjected to unnecessary and wanton infliction of pain in violation of the Eighth Amendment, in view of the testimony presented and the total lack of evidence corroborating the inmate's claim that he was physically assaulted by a corrections officer at the shower cell. Furthermore, the alleged taunting and jostling of the inmate by corrections officers who were returning the inmate to his cell did not amount to conduct so egregious as to cause a violation of the Eighth Amendment; even as alleged by the inmate, the officers' use of force was minimal, caused no physical injury, and was not the type to be physically injurious or painful. (Iowa State Penitentiary, Fort Madison, Iowa)
- U.S. District Court
SINKS
WATER
- Thomas v. Brown, 824 F.Supp. 160 (N.D. Ind. 1993). A state prisoner brought a civil rights action, claiming that he had been deprived of running water in a sink in his cell. The district court found that material issues of fact, precluding summary judgment on behalf of prison officials, existed as to whether the prisoner had been subjected to cruel and unusual punishment. There was dispute about whether the prisoner had notified authorities, and as to whether the officers had shown necessary deliberate indifference to his plight. However, the complaint did not state an equal protection claim. (Indiana State Prison)
- 1994
- U.S. District Court
HYGIENE ITEMS
- Eason v. Nicholas, 847 F.Supp. 109 (C.D. Ill. 1994). A state prisoner brought a Section 1983 action against state correctional center officials. The court found that the prisoner was not subjected to cruel and unusual punishment under the Eighth Amendment, despite the prisoner's contention that he was forced to choose between paying the costs of posting his lawsuits or doing without articles of hygiene. The officials provided for both the prisoner's basic needs and his legal needs. Officials were under no obligation to fund, without restraint, the prisoner's recreational litigation and jail-house lawyering. (Western Illinois Correctional Center)
- U.S. District Court
SHOWERS
- Huffman v. Fiola, 850 F.Supp. 833 (N.D. Cal. 1994). A prisoner filed a federal civil rights complaint against prison officials and police officers and sought to proceed in forma pauperis. The district court found that refusal to allow the prisoner to shower for three days after an alleged sexual assault reached the level of a cognizable claim. Even though, under ordinary circumstances, denial of a shower for three days would not be actionable, the prisoner alleged that jail personnel allowed other inmates to shower, that the prisoner had been sexually assaulted, and that jail personnel knew of the assault. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)
- U.S. District Court
HYGIENE ITEMS
- Taifa v. Bayh, 846 F.Supp. 723 (N.D.Ind. 1994). Prisoners brought a class action suit challenging conditions of confinement at a prison operated by the Indiana Department of Corrections. The district court approved a settlement agreement involving assignment and transfer of prisoners, along with improvement of various prison conditions at the Maximum Control Complex (MCC). The state agreed only to assign prisoners to MCC under specified conditions and to transfer prisoners out of MCC after a specified period of time, subject to certain conditions, and agreed to alter MCC conditions in many areas. The agreement also provided for improvements in the condition of bedding and additional access by prisoners to personal hygienic items. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)
- 1995
- U.S. District Court
HYGIENE ITEMS
SHOWERS
LAUNDRY
- Burton v. Cameron County, Tex., 884 F.Supp. 234 (S.D. Tex. 1995). A detainee who suffered from AIDS brought Section 1983 and Texas tort claims actions against a sheriff and a county for alleged harassment. On a motion for summary judgment by the county, the district court found that, even taken as true, allegations that the detainee was denied access to shaving, haircuts, and finger and toe nail cutting, was verbally harassed by jail guards, was forced to use disposable eating utensils, was forced to wash his own clothes, and was forced to use showers in which unnamed persons had urinated did not demonstrate that the county violated his due process rights for failure to provide reasonably adequate hygiene and sanitation conditions. (Cameron County Jail, Texas)

- U.S. District Court
WATER
TOILETS
- Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court found that the use of chemical toilets violated the Eighth Amendment rights of the inmates where the use and emptying of the toilets resulted in extremely unsanitary conditions, the toilets caused an unbearable stench, and prison inmates suffered numerous health problems caused by the use of toilets including nausea, burns, and rashes. The court also found that there were genuine issues of material fact as to whether prison officials acted with deliberate indifference regarding chemical toilets, precluding summary judgment. The court held that genuine issues of material fact precluded summary judgment on the allegation that pest or vermin infestation created inadequate sanitation in violation the Eighth Amendment. The court noted that infestation of vermin such as rats, mice, birds, and cockroaches in the prison is inconsistent with adequate levels of sanitation required by the Eighth Amendment. (Southeast Correctional Center, Massachusetts)
- U.S. District Court
HYGIENE ITEMS
- May v. Baldwin, 895 F.Supp. 1398 (D.Or. 1995). An inmate brought an action against prison officials alleging violation of his civil rights. The court found that evidence did not support the inmate's claim that he was deprived of basic personal hygiene items while in a disciplinary segregation unit, where it was undisputed that when an inmate arrived in the unit he is provided with personal hygiene items that consisted of a towel, bar of handsoap, comb and toothbrush, and that baking soda and toilet paper are issued following meals. The inmate alleged that he was deprived of shampoo, conditioner, and body lotion. The court found that evidence did not support the inmate's claim that prison officials discriminated against him because he was black, despite his assertion that he was not given lotion for his dry skin problem when he was in a prison infirmary, while a white inmate was given vaseline for chapped lips. Officials stated that he was denied the lotion because his dry skin was not medically serious and he was not denied the opportunity to purchase lotion from the prison canteen. (Eastern Oregon Correctional Institution)
- U.S. District Court
CLOTHING
- McCorkle v. Walker, 871 F.Supp. 555 (N.D.N.Y. 1995). An inmate brought a civil rights action against various prison officials alleging violation of the Eighth Amendment. The district court found that the Eighth Amendment prohibition against cruel and unusual punishment was not violated either by the inmate's alleged lack of a change of underwear for 15 days or the failure to transfer the inmate after psychiatric personnel employed by the Office of Mental Health suggested that a transfer might reduce some of the inmate's stress. (Auburn Correctional Facility, New York)
- U.S. Appeals Court
SHOWERS
- Shakka v. Smith, 71 F.3d 162 (4th Cir. 1995). A prisoner who had been placed in a restricted cell brought a civil rights action against prison officials alleging violation of his Eighth Amendment rights. The prisoner was placed in a cell in which all stimuli and material that could be used in a violent manner had been removed, including his wheelchair. He was not allowed to take a shower for three days after fellow inmates had thrown human excrement and urine on him, but he was immediately provided with materials to clean himself and his cell. The district court granted summary judgment for the officials and on appeal the decision was affirmed. The appeals court found that depriving the prisoner of his wheelchair for a one-day period at the direction of the prison psychologist did not constitute deliberate indifference to the prisoner's serious medical needs. The psychologist sought to prevent the prisoner from disassembling his wheelchair, as he previously had disassembled plumbing fixtures in an effort to harm himself or others. The court also found that confinement in the special cell and refusal to allow a shower for three days did not constitute cruel and unusual punishment. (Maryland Penitentiary)
- U.S. Appeals Court
BEDDING
CLOTHING
- Williams v. Delo, 49 F.3d 442 (8th Cir. 1995). An inmate brought a Section 1983 action against prison officials alleging that conditions of his confinement in a strip cell violated the Eighth Amendment, seeking damages and injunctive relief. The U.S. District Court denied the prison officials' motion for summary judgment and the officials appealed. The appeals court, reversing and remanding with instructions, found that the officials were entitled to qualified immunity as to the inmate's damages claim. While the inmate did not have clothing or bedding, he was given three meals a day, including milk, and was sheltered from the elements. He did not show that any of the prison officials named as defendants knew of and disregarded an excessive risk to his health or safety. The inmate also failed to show that prison officials knowingly disregarded, were disregarding, and would continue to disregard an objectively intolerable risk of harm to his health or safety, as required to prevail on a claim for injunctive relief. (Potosi Correctional Center, Missouri)
- U.S. District Court
HYGIENE ITEMS
TOILET PAPER
TOILETS
- Wilson v. Cook County Bd. of Commissioners, 878 F.Supp. 1163 (N.D. Ill. 1995). A pretrial detainee brought a Section 1983 action against detention facility officials and a county board of commissioners alleging due process violations. On the defendants' motions to dismiss, the district court found that the pretrial detainee's allegations that the detention facility failed to provide clean sheets, clothing, and a towel, had a limited number of toilets, showers, and sinks, and lacked sufficient toilet paper, soap, and cleaning materials stated a claim for violation of due process, where these conditions were probably not reasonably related to any legitimate government objective. (Cook County Jail, Illinois)

1996

U.S. Appeals Court HYGIENE ITEMS

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. Indigent inmates have a right to personal hygiene supplies such as toothbrushes and soap, and disputed issues of material fact as to whether prison officers required the inmate to buy personal hygiene items precluded summary judgment. (Oregon State Prison)

U.S. Appeals Court HYGIENE ITEMS

Myers v. Hundley, 101 F.3d 542 (8th Cir. 1996). Inmates in administrative segregation brought a § 1983 action claiming violation of their constitutional rights as the result of a prison practice regarding idle-pay allowances for personal necessities and postage. The district court granted summary judgment for the prison officials and the inmates appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court found that material factual issues were raised, precluding summary judgement, by the inmate who specifically asserted that the insufficient amounts left over after purchasing hygiene supplies forced him to miss court deadlines and dismiss cases. The inmate had also listed specific prices of hygiene supplies on which he had to spend his idle pay. Inmates in administrative segregation receive \$7.70 per month in idle pay, from which they must buy necessary hygiene supplies (such as soap and toothpaste), non-prescription medications, and stamps and supplies for legal mail. The inmates claimed that the amount is not enough and that they are therefore forced to choose between being clean and pursuing legal claims. (Iowa State Penitentiary)

U.S. Appeals Court CLOTHING BEDDING HYGIENE ITEMS ISOLATION

O'Leary v. Iowa State Men's Reformatory, 79 F.3d 82 (8th Cir. 1996). Iowa inmates who were placed in a progressive four-day behavior management program filed suit under § 1983 alleging cruel and unusual punishment. The district court entered judgment for the defendants and the inmates appealed. The appeals court affirmed the lower court decision, finding that the inmates were not denied the minimal civilized measures of life's necessities. The court also found that there was no showing that prison officials were deliberately indifferent to an excessive risk to inmate health or safety. The inmates had received disciplinary reports and were placed in the behavior management program. On the first day of the program prisoners are deprived of underwear, blankets, mattresses, exercise and visits; prisoners are provided with normal diets, sanitation and hygiene supplies, and they may read their mail but they may not retain it. On the second and following days prisoners gradually regain the deprived items--as long as they demonstrate satisfactory behavior. (Iowa State Men's Reformatory)

U.S. Appeals Court HYGIENE ITEMS

Penrod v. Zavaras, 94 F.3d 1399 (10th Cir. 1996). An inmate brought a § 1983 suit against prison officials alleging several violations. The district court granted summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that restrictions placed on the inmate's law library access as the result of his status as an "unassigned" prisoner (one who does not have a job or program assignment), did not violate his right of access to courts. The appeals court found that summary judgment was precluded on the inmate's claim that denial of items of personal hygiene caused the inmate serious harm. (Limon Correctional Facility, Colorado)

U.S. Appeals Court TOILETS

Smith v. Copeland, 87 F.3d 265 (8th Cir. 1996). A pretrial detainee brought a federal civil rights action against jail officials alleging the use of excessive force and challenging his conditions of confinement. The district court granted summary judgment for the defendants on several issues and the inmate appealed. The appeals court affirmed, finding that the inmate's allegations that he was exposed to raw sewage for four days due to an overflowing toilet failed to state a constitutional claim based on conditions of confinement. The court found that having to endure the stench of his own feces and urine for four days amounted to a de minimis imposition on detainee's rights, and noted that the inmate did not dispute the assertion by jail officials that he was offered the opportunity to clean up the mess himself. (Cape Girardeau County Jail, Missouri)

1997

U.S. Appeals Court BEDDING CLOTHING HYGIENE

Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997). Inmates sued prison officials alleging that their confinement to administrative segregation violated their procedural and substantive due process rights. The district court granted summary judgment for the officials and the inmates appealed. The appeals court affirmed, finding that conditions in administrative segregation were not so atypical that exposure to them for six months imposed significant hardship in relation to the ordinary incidents of prison life. The alleged conditions included: cells infested with vermin; cells smeared with human feces and urine and flooded with water; unbearably hot temperatures; cold food in small portions; infrequent receipt of clean clothing, bedding and linen; inability to leave cells more than three or four times per week; denial of outside recreation; and denial of educational or religious services. (Maryland Penitentiary)

U.S. District Court
HOT WATER
HYGIENE
SHOWERS
WATER

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting.

The court found due process violations resulting from physical defects in the jail's water, plumbing and sewage system which created safety hazards. The jail's antiquated water supply system violated public health requirements and safe drinking water codes. Deteriorated sanitary fixtures such as unsealed floors, hot water pipes with deteriorated asbestos insulation, violated the detainees' rights as did sewage leaks from plumbing equipment. These conditions violated detainees' rights even though there was no evidence of any disease resulting from the deficiencies.

The court concluded that development and implementation of a narrowly tailored remedial plan was an appropriate remedy, and that the plan was to address each condition that was found unconstitutional including fire safety, seismic safety, water, plumbing, sewage, noise, lighting and overcrowding. (San Francisco Jail No. 3, California)

U.S. District Court
HYGIENE ITEMS

Miller v. Michigan Dept. of Corrections, 986 F.Supp. 1078 (W.D.Mich. 1997). An inmate filed a § 1983 action against two prison nurses and their supervisor alleging deliberate indifference to his serious medical needs. The district court dismissed the claim, finding that the inmate failed to prove that a nurse actually knew that he was inadequately supplied with adult undergarments for his incontinence and that the nurse consciously disregarded that need. The court also held that intermittent delays during a three-day period in supplying the inmate in administrative segregation with adult undergarments for incontinence were not sufficiently serious deprivations to establish an Eighth Amendment violation. According to the court, at worst the inmate showed that the delays caused him to suffer indignity and discomfort. (Kinross Correctional Facility, Michigan)

U.S. District Court
WATER

Reid v. Artus, 984 F.Supp. 191 (S.D.N.Y. 1997). An asthmatic inmate filed a § 1983 suit against a prison superintendent to recover for denial of running water and medication during his confinement in keeplock. The district court granted summary judgment for the superintendent, finding that denial of running water in his cell, and of a breathing treatment for one night, did not violate the Eighth Amendment. The court noted that the inmate received water when it was needed, was able to shower in accordance with keeplock rules, refused an offer to be admitted to the medical clinic on the first day the water was turned off, and had his pills and inhaler in his cell at all times. The inmate had alleged that he was denied running water and asthma medication for eight days. (Green Haven Correctional Facility, New York)

1998

U.S. Appeals Court
SHOWERS

Barney v. Pulsipher, 143 F.3d 1299 (10th Cir. 1998). Two female former inmates who were sexually assaulted by a jailer each brought a § 1983 action against jailer, county, sheriff and county commissioners based on their assault and other conditions of confinement. The actions were consolidated and all defendants except the jailer were granted summary judgment by the district court. The appeals court affirmed, finding that the county was not liable on the grounds of failure to train or inadequate hiring. According to the appeals court the inmates failed to establish an equal protection claim. The court also found that the sheriff and commissioners did not act with deliberate indifference to the female inmates' health and safety with regard to conditions of confinement. The inmates' allegations regarding a filthy cell, inadequate lighting and ventilation, lack of enclosure around a shower, unappetizing food, and lack of access to recreational facilities, did not rise to the level of a constitutional violation given that the inmates were confined for only 48 hours. (Box Elder County Jail, Utah)

U.S. Appeals Court
SHOWERS

Bradley v. Puckett, 157 F.3d 1022 (5th Cir. 1998). A prison inmate sued correctional officials under § 1983 alleging they failed to take steps to accommodate his physical disability, preventing him from showering during the time he was placed in close confinement. The district court dismissed the case, but the appeals court vacated the decision and remanded the case, finding that the inmate's complaints were sufficient to state a claim under the Cruel and Unusual Clause of the Eighth Amendment. The prisoner alleged that the officials knew that his disability prevented him from showering without assistance, and placed him in lock-down for two months without making any attempt to accommodate his disability, requiring him to go without bathing for two months, resulting in the development of a fungal infection. The inmate wore a leg brace which made it dangerous for him to shower without a shower chair. (Mississippi State Penitentiary)

U.S. District Court
HYGIENE ITEMS

Essex County Jail Annex Inmates v. Treffinger, 18 F.Supp.2d 445 (D.N.J. 1998). Inmates filed a motion to hold county corrections defendants in civil contempt for

noncompliance with a consent decree addressing unconstitutional conditions of confinement. The district court held that monetary sanctions for civil contempt were not appropriate in light of the county's efforts to attain full compliance by investing over \$200 million in new facilities and improving existing ones. The court concluded that contempt sanctions would be counterproductive and would impede the county's efforts to build a new jail. The Master reported that there was an insufficient supply of personal hygiene items, and the court ordered the defendants to comply with the consent order's terms by issuing adequate amounts of personal hygiene items, including toilet paper, soap, shampoo, toothpaste, toothbrush, comb, mirror, individual razors and shaving cream or powder. (Essex County Jail and Essex County Jail Annex, New Jersey)

U.S. District Court
HYGIENE ITEMS
BEDDING

Jackson v. DeTella, 998 F.Supp. 901 (N.D. Ill. 1998). An inmate filed a pro se § 1983 action against prison officials in their individual and official capacities claiming he was subjected to excessive physical force and that he was subjected to cruel and unusual punishment because of certain conditions of his confinement. The district court held that officials who sprayed the inmate with a chemical agent and beat him were not entitled to qualified immunity. The court found that an eight-day deprivation of personal hygiene items and bedding was not cruel and unusual punishment, where there was no evidence that the deprivation resulted in harm to the inmate. (Stateville Correctional Center, Illinois)

U.S. District Court
SHOWERS

James v. Coughlin, 13 F.Supp.2d 403 (W.D.N.Y. 1998). A state inmate brought a § 1983 suit against corrections officials alleging constitutional violations in connection with a search. The district court granted summary judgment to the officials, finding that the curtailment of the inmate's First Amendment rights during a pat-frisk was justified. The inmate was denied a single shower after the search because of his conduct, and the court found that this did not implicate any constitutionally protected liberty interest. (Attica Correctional Facility, New York)

U.S. District Court
HYGIENE ITEMS

Richmond v. Stigile, 22 F.Supp.2d 476 (D.Md. 1998). An inmate brought a § 1983 action against prison officials alleging that deductions from his inmate account, assessed under the Prison Litigation Reform Act (PLRA), violated his right to due process and deprived him of basic hygienic needs. The district court held that the filing fees were properly assessed to the inmate and that even if prison officials had not complied with the PLRA provisions in deducting funds from the inmate's account, the inmate could not prevail on his due process claim because he failed to demonstrate that the deprivation occurred as the result of an established state procedure rather than from an unauthorized failure of state agents to follow an established state procedure. The court found that the inmate's claim that he was deprived of basic hygiene articles because of the filing fee deductions did not rise to the level of an Eighth Amendment deprivation because the deprivation was not sufficiently lengthy or serious. (Western Correctional Institution, Maryland)

1999

U.S. District Court
SHOWERS

Beckford v. Irvin, 49 F.Supp.2d 170 (W.D.N.Y. 1999). Defendants moved to set aside a jury verdict and dismiss an inmate's case against them. The district court denied the motions, finding that the award of compensatory and punitive damages was not excessive. The inmate had been confined to a wheelchair since 1984. In 1994 he was transferred from a psychiatric center to another correctional facility where he was assigned to a Mental Health Observation Unit (MHU). The court noted that the inmate was "...not placed in MHU for mental health treatment. He was placed in MHU because the cell was bigger and because his wheelchair fit in the cell." But shortly after his transfer officials took away his wheelchair and denied him access to it for the majority of his time at the facility. The inmate repeatedly requested permission to use his wheelchair and his requests were denied. The jury concluded that the inmate's rights had been violated because he was unable to participate in outdoor exercise or to take a shower because he was not allowed to use his wheelchair. The jury awarded \$125,000 in compensatory damages for violations of the Americans with Disabilities Act (ADA) and punitive damages totaling \$25,000 against two supervisory officials for being deliberately indifferent to the inmate's serious medical needs. The court noted that the fact that the jury did not assess liability on the part of lower ranking prison officials did not preclude the jury from assessing liability on the supervisory officials. (Wende Correctional Facility, New York)

U.S. District Court
TOILETS
SHOWERS

Harris v. Brewington-Carr, 49 F.Supp.2d 378 (D.Del. 1999). A pretrial detainee challenged his conditions of confinement and a district court judge refused to dismiss the case, finding that the detainee had sufficiently alleged violation of his due process rights. The pretrial detainee alleged that he was required to sleep on the floor for one week while being held in a booking and receiving area, that he had to sleep on the floor for three weeks before receiving a bed, that he was housed in a one man cell with two other men, that the open toilet in his cell was unsanitary and deprived him of his right to privacy, that there was a lack of showers and excessive noise, that he was housed with sentenced and unsentenced inmates, and that as a non-smoker he had to breathe cigarette smoke from other inmates. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court
HYGIENE
SHOWERS
TOILETS
WATER
BEDDING

Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). A state inmate brought a § 1983 action for monetary and injunctive relief against correctional officials, alleging violation of his constitutional rights when he was forced to spend a night on a work field, along with other members of a work squad, without adequate bathroom facilities and shelter. The district court found a warden and assistant warden liable in their individual capacities, granted injunctive relief, and ordered claims for monetary damages to proceed to trial. The appeals court affirmed in part and remanded, finding that the inmate had demonstrated a violation of his clearly established Eighth Amendment rights and that the warden and assistant warden were not entitled to summary judgment on the basis of qualified immunity. The inmate alleged that he and other members of his work crew were confined outdoors overnight without any shelter, jackets, blankets, or a source of heat while the temperature dropped and the wind blew, and without bathroom facilities for 49 inmates sharing a small bounded area. The warden allegedly ordered this "sleep-out" in response to the inmates' response to a lecture they had received from a sergeant after lunch. They were ordered to stop and sit in the field, even though some of them wanted to go to work. They were confined to an area measuring approximately twenty feet by thirty feet, bounded by poles and a string of lights. Correctional officers were ordered to shoot any inmate who attempted to leave the designated area. When the inmate asked permission to leave the area to urinate and defecate he was informed that he would be shot if he attempted to do so outside of the boundaries that had been set. The inmates were dressed in short sleeve shirts for a day of work in the field, but the temperature fell below fifty-nine degrees overnight and the inmates were forced to stay warm by huddling together. Both the warden and assistant warden were present during the evening of the "sleep-out" and the warden allegedly threatened another such event if the inmates refused to work. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
BEDDING
INDIGENT PRISONERS
HYGIENE ITEMS

Robeson v. Squadrito, 57 F.Supp.2d 642 (N.D.Ind. 1999). Inmates brought an action against a county and jail officials alleging violations of their Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the conditions of confinement in the overly-crowded jail did not rise to the level of deprivations of "the minimal civilized measures of life's necessities." The court found that the officials' failure to give an inmate his high blood pressure medication for 36 hours was not deliberate indifference to his serious medical needs given there was no evidence he was denied the medication out of anything approaching a total unconcern for his welfare, and the inmate did not suffer any injury or harm. The court also found that the failure of jail officials to give the inmate his hypoglycemic diet was not deliberate indifference where the inmate's blood sugar was tested daily in accordance with his physician's order, and no special diet was ordered because his sugar levels were normal. According to the court, the cumulative conditions of confinement in the crowded county jail did not rise to the level of deprivations required to find an Eighth Amendment violation, even though the inmate was required to sleep on a thin mattress on the floor, had one shower, was assaulted by another inmate, was not taken to a gymnasium, was given small servings of food, and was initially denied an "indigent pack" of hygiene items. The court noted that the inmate had a blanket, clean sheets, functional toilets, sinks, drinking fountain and television, he exercised in the cell, and he did not suffer any injury as a result of the assault. (Allen County Jail, Indiana)

U.S. District Court
HYGIENE ITEMS

Rapier v. Harris, 172 F.3d 999 (7th Cir. 1999). A pretrial detainee brought a § 1983 action against a sheriff, county jail employees and a police detective claiming constitutional violations during his detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that although it is permissible to punish a pretrial detainee for misconduct while in pretrial custody, that punishment can be imposed only after affording the detainee some sort of procedural protection. The defendants had kept the detainee in segregation as punishment for his conduct while confined, but he did not receive a written notice or a hearing, or any other process. His misconduct continued while he was in solitary confinement, resulting in a variety of interdepartmental reports and memoranda, and he remained there for 270 consecutive days. During this time his phone and commissary privileges were suspended for periods of time, he was denied writing materials, he received no access to recreational facilities, and he was denied showers and personal hygiene items. But the appeals court held that the detainee was not deprived of "anything necessary for his sustenance." The appeals court granted qualified immunity to the defendants, finding that the law was not sufficiently clear at the time to apprise the sheriff and employees that procedural safeguards were required. (Vigo County Jail, Indiana)

U.S. District Court
SHOWERS

Roop v. Squadrito, 70 F.Supp.2d 868 (N.D.Ind. 1999). An inmate who was HIV-positive and incarcerated in a county jail on an outstanding arrest warrant brought a § 1983 claim and a claim under the Americans with Disabilities Act (ADA) against county officials. The district court denied summary judgment for the defendants. No violation was found regarding the inmate's complaint that he was not able to take showers more often while confined because the court held that the deprivation of "a mere cultural amenity" is not cruel and unusual punishment. The inmate's complaints about sanitation, including dirt on the floor of his cell, were not found to be a constitutional violation. However, the court found that the alleged deprivations and violations, when taken together, constituted a violation of his Eighth Amendment rights, precluding summary judgment for the jail officials. (Allen County Jail, Indiana)

2000

U.S. District Court
RAZORS
HAIR

Deblasio v. Johnson, 128 F.Supp.2d 315 (E.D.Va. 2000). State prisoners brought a § 1983 action challenging a state corrections department's grooming regulation that required all male inmates' hair to be no more than one inch thick and precluded special styles such as braids or mohawks. The district court granted summary judgment in favor of the defendants, finding that the regulation did not violate the inmates' rights under the First or Fourth Amendments. The court also found that punishment for violations of the regulation, which included isolation and loss of recreation and visitation privileges, did not violate the Eight Amendment. The court held that even if the regulation had a disparate impact on inmates of a certain religion, it did not violate the equal protection clause. The court also found that the regulation did not violate the equal protection clause with regard to alleged gender discrimination, where the prison experience and data demonstrated that male inmates were more violent than female inmates, and therefore contraband hidden in the hair of male inmates posed a greater security threat. According to the court, failure to ensure that barbering equipment was sanitized between haircuts and that barbers were trained and checked or vaccinated for hepatitis, did not violate the Eight Amendment. The court also found no Eight Amendment violation in the refusal of officials to provide razors to inmates to facilitate compliance with the regulation, even though this resulted in inmates borrowing razors from other inmates, increasing the risk of hepatitis. (Virginia Department of Corrections)

2001

U.S. District Court
CLOTHING
BEDDING

Brown v. McElroy, 160 F.Supp.2d 699 (S.D.N.Y. 2001). A prisoner brought an action against the Immigration and Naturalization Service (INS) and Public Health Service (PHS) alleging inadequate medical treatment and other complaints. The district court found that PHS officials were absolutely immune from liability on the claim of inadequate health care. The court found no constitutional violation from the alleged conditions of a cold room, no clean bed linens, toiletries, or clean clothing. (Buffalo Federal Detention Facility, Batavia, New York)

U.S. Appeals Court
CLOTHING
HOT WATER

Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging constitutional violations, including unhealthful conditions and exposure to asbestos. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate was precluded from recovering for emotional or mental damages because he failed to allege a physical injury. The inmate alleged that he was subject to cold showers, cold food, unsanitary dishes, insect problems, lack of adequate clothing, and the presence of an open "cesspool" near his housing unit. (East Carroll Det. Ctr., Louisiana)

U.S. District Court
SHOWERS
CLOTHING

Waring v. Meachum, 175 F.Supp.2d 230 (D.Conn. 2001). Inmates brought several class actions against prison administrators and correctional officers alleging constitutional violations during a lockdown. The actions were consolidated and the district court granted summary judgment in favor of the defendants. The court held that where a genuine emergency exists, officials may be more restrictive than they otherwise may be, and certain services may be suspended temporarily without violating the Eighth Amendment. The lockdown was precipitated by a series of prisoner assaults on staff and other prisoners. The court found that refusal to allow prisoners to shower during the eight-day lockdown did not rise to the level of an Eighth Amendment violation, nor was failure to provide prisoners with changes of clothing during the lockdown. (Connecticut Correctional Institution at Somers)

2002

U.S. Appeals Court
HYGIENE ITEMS

Curtis v. Curtis, 37 Fed.Appx. 141 (6th Cir. 2002). A prison inmate brought a § 1983 action alleging that a prison officer had improperly denied him personal hygiene items. The district court granted summary judgment in favor of the officer and the appeals court affirmed. The appeals court noted that all inmates held in the detention facility had been provided with a personal hygiene packet, and that the inmate had money in his jail account that he could have used to obtain additional hygiene items. (Henderson County, Kentucky)

U.S. Appeals Court
TOILET PAPER

Dye v. Lomen, 40 Fed.Appx. 993 (7th Cir. 2002). A state prisoner brought § 1983 claims against correctional employees, alleging they used excessive force against him during two entries into his cell, that they refused to provide him with toilet paper for several days, and that they strip-searched him in front of a female employee. The district court granted summary judgment in favor of the correctional employees and the appeals court affirmed. The appeals court found that the failure to provide the prisoner with toilet paper for several days did not violate the prisoner's rights, absent proof that the officials deprived him of toilet paper to unnecessarily and wantonly inflict pain upon the prisoner. (Kettle Moraine Correctional Institution, Wisconsin)

U.S. District Court
TOILETS
SHOWERS
BEDDING

Liles v. Camden County Dept. of Corrections, 225 F.Supp.2d 450 (D.N.J. 2002). Former inmates brought an action against county officials alleging that conditions of confinement violated their Eighth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that no evidence showed that prison mattresses, that were between two and two and one-half inches thick, caused the inmates' back injuries. The court found that the inmates' claims regarding inadequate bedding did not rise to the level required to support a claims of inadequate prison conditions, where the inmates

received two sheets and one blanket, but no pillow. The court held that evidence did not support the claim that shower conditions caused the inmates to break out in rashes. Although the inmates presented an expert report of a "forensic sanitarian," the court noted that the report concluded only that the poor condition of the shower and lack of sanitation "may result" in rashes. Inmates alleged that state laundry services did not adequately clean their laundry, causing them to hand-wash their clothing and dry and store their clothing in their cells. The court held that the inmates failed to show any practice or policy of the prison that caused rashes and infections. The court held that a 22-day lock-down that caused inconvenience and discomfort to the inmates did not violate the Eighth Amendment, although the inmates were allowed only 20 minutes daily outside their cells to shower, use the bathroom, exercise and make phone calls. The court noted that the lock-down went into effect because an inmate had tried to escape out of a prison roof and the roof had to be prepared. The court found that summary judgment was precluded by fact issues as to whether fighting that broke out as the result of prisoners urinating on each other constituted a threat to the health and safety of the inmates. The inmates alleged that violence among inmates broke out when urine splashed on inmates who slept on cell floors next to toilets, due to crowding. (Camden County Correctional Facility, New Jersey)

U.S. Appeals Court
INDIGENT
PRISONERS

Moore v. Chavez, 36 Fed.Appx. 169 (6th Cir. 2002). A state prisoner brought suits against a state corrections department and correctional officials, alleging that he was improperly denied indigent status after he dropped out of an educational course, and that the defendants denied him employment when he refused to take a qualifying exam. The district court entered judgments generally in favor of the defendants and the appeals court affirmed. The appeals court held that the denial of indigent status did not constitute cruel and unusual punishment, even though the prisoner alleged that as a result of losing his indigent status he could not receive a loan to purchase hygiene items. The court noted that the inmate did not allege that he suffered extreme discomfort or that he was completely denied the basic elements of hygiene. The appeals court held that the prisoner's claim that the defendants discriminated against him because he had to use a wheelchair and could not take tests under pressure, was barred by Eleventh Amendment immunity. (Michigan Department of Corrections)

U.S. District Court
BEDDING

Smith v. Board of County Com'rs. of County of Lyon, 216 F.Supp.2d 1209 (D.Kan. 2002). A prisoner brought state tort and federal Eighth Amendment claims against county officials arising out of a serious spinal chord injury he allegedly suffered in a fall, and for which he did not receive requested medical attention. The defendants moved for summary judgment and the district court granted the motions in part, and denied in part. The district court found no Eighth Amendment violation from the failure of jail staff to provide clean bedding and clothing to the inmate who suffered from incontinence, on four or five occasions. The court concluded that the inmate's complaint that officials failed to supervise jail staff to ensure compliance with procedures was "far too generic" to support an Eighth Amendment claim, and that he failed to show systemic and gross deficiencies in training jail personnel. (Lyon County Jail, Kansas)

2003

U.S. District Court
HYGIENE

Boyd v. Anderson, 265 F.Supp.2d 952 (N.D.Ind. 2003). Prisoners filed a complaint in state court, alleging that state corrections officials had violated their federally-protected rights while they were confined in a state prison. The case was removed to federal court, where some of the claims were dismissed. The court held that the prisoners' allegations that cells were very small and that they were denied out of cell recreation stated an Eighth Amendment claim. The court found that the prisoners stated an Eighth Amendment claim with their allegations that their cells were filthy and that they suffered from a total lack of sanitation and personal hygiene. The court noted that the Eighth Amendment deliberate indifference standard applies to prison conditions affecting fire safety, although not all unsafe conditions constitute punishment under the Eighth Amendment. The court held that the prisoners stated an Eighth Amendment claim with allegations that their cells were small and that they were denied out of cell recreation. (Indiana State Prison)

U.S. District Court
SHAVING

Gerber v. Sweeney, 292 F.Supp.2d 700 (E.D.Pa. 2003). State prison inmates brought a § 1983 action against prison officials, alleging that they were provided with a nutritionally inadequate diet, received inadequate medical care, and were subjected to the use of excessive force. The district court granted summary judgment in favor of the defendants. The court held that the denial of the inmates' request for hats and gloves, and for shoes instead of sandals, to wear during outdoor recreation in winter months did not violate their Eighth Amendment right to regular exercise. The court noted that the inmates failed to show that protracted periods of inclement weather, foreclosing outdoor activity, occurred with any frequency. The court found that the prison's use of unlicensed barbers to provide haircuts for inmates, and requiring inmates to share electric razors, did not place the inmates at a risk of serious or substantial harm absent any showing that the inmates were at any additional risk of contracting diseases. (Lehigh County Prison, Pennsylvania)

U.S. District Court
TOILETS

Mitchell v. Newryder, 245 F.Supp.2d 200 (D.Me. 2003). A detainee brought a § 1983 action against a county jail officer, alleging permanent traumatization as a result of being made to sit in his feces for five hours after his repeated requests to use a toilet were denied by the officer. The district court denied the officer's motion to dismiss. The court found that the detainee

sufficiently alleged that he was denied a minimum civilized measure of life's necessity and that the officer had a culpable state of mind. The court held that the detainee could not seek compensatory damages absent an actual physical injury. The court agreed to consider the detainee's request for injunctive relief, barring further interference with his rights by the officer. The detainee alleged that the officer refused to allow him to use a toilet and then refused to let him clean himself up for five hours after he defecated in his pants. According to the detainee, the officer displayed hostility towards him during his denial, using insulting and offensive language and expressions. The detainee had been placed in a cell without a toilet, mattress or blanket, upon his admission to the jail. He was not being punished for anything but he was purposefully being separated from other inmates. The detainee alleged that he was not intoxicated, nor did he act disrespectfully. (Aroostook County Jail, Maine)

2004

U.S. District Court
LAUNDRY
BEDDING

Davidson v. Conway, 318 F.Supp.2d 60 (W.D.N.Y. 2004). A prisoner moved to amend his § 1983 complaint to add additional defendants and to add two causes of action pertaining to his conditions of confinement. The district court denied the inmate's motion. The court held that even assuming that the inmate was issued one blanket, one towel, and one set of laundered bedding per week, the alleged deprivation was not sufficiently serious to constitute cruel and unusual punishment. The court noted that the Eighth Amendment does not mandate comfortable prisons. (Elmira Correctional Facility, New York)

U.S. Appeals Court
LAUNDRY
HOUSEKEEPING
RODENTS/PESTS

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004). A death row prisoner brought a suit on behalf of himself and other prisoners confined to death row, alleging that certain conditions of confinement on death row violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court found that a number of conditions violated the Eighth Amendment and issued an injunction designed to alleviate the conditions. The defendants appealed. The appeals court affirmed in part and vacated in part. The court held that the prison's accreditation by a national correctional association (American Correctional Association) was not proof that the conditions of confinement did not violate the Eighth Amendment. The court noted that compliance with association standards could be a relevant consideration, but was not evidence of constitutionality. The court did not find a constitutional violation in the condition of the inmate laundry, which required inmates to wash their own clothes with bar soap. The court found an Eighth Amendment violation due to mosquito infestation coupled with insufficient screen gauge, which exacerbated the heat problems by deterring death row inmates from opening their windows to increase circulation. The court noted that pest infestation problems were linked to chronic sleep deprivation, which exacerbated the symptoms of mental illness. The court found a violation due to "ping-pong" toilets, and that corrections officials were deliberately indifferent to the risk of harm that these toilets presented to death row inmates. Experts established that a serious health hazard resulted when the feces of one inmate bubbled up in the neighboring cell, and that this was exacerbated when toilets overflowed. According to the court, the State Department of Health warned corrections officials every year for the past eleven years that the malfunctioning toilets were a critical public health problem that required immediate attention. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. District Court
TOILETS

Masonoff v. Dubois, 336 F.Supp.2d 54 (D.Mass. 2004). State inmates filed a class action under § 1983 alleging that conditions of their confinement violated their Eighth Amendment rights. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that the facility's superintendent and administrator were not entitled to qualified immunity because a prisoner's right to adequate and hygienic means to dispose of his bodily wastes was clearly established in 1991. The court noted that a state court had required prison officials to inspect toilets at least twice per month and issued specific directions regarding their inspection, cleaning and replacement. The officials allegedly did nothing to alleviate obvious sanitation problems associated with the cleaning and maintenance of the toilets. (Southeast Correctional Center, Massachusetts)

U.S. Appeals Court
HYGIENE

Russell v. Richards, 384 F.3d 444 (7th Cir. 2004). Two inmates brought an action against a sheriff, challenging a jail's policy of instructing new inmates to use delousing shampoo. The district court entered summary judgment for the sheriff and the inmates appealed. The appeals court affirmed, finding that the jail's policy did not violate the inmates' due process right to be free from unwanted medical treatment. The court noted that the jail's policy had a legitimate penological interest in preventing inmates and staff from being exposed to lice, and avoiding the costs associated with eradicating a lice infestation. According to the court, allowing individual inmates to reject delousing shampoo would have placed the sanitation of other prisoners at risk and exposed the jail to potential lawsuits. (Johnson County Jail, Indiana)

U.S. District Court
HYGIENE ITEMS
TOILET PAPER
TOOTHPASTE

Atkins v. County of Orange, 372 F.Supp.2d 377 (S.D.N.Y. 2005). Jail inmates brought a § 1983 action against a county and corrections officers, alleging indifference to their mental health needs and mistreatment. The defendants moved to preclude expert witness testimony and for partial summary judgment. The district court granted summary judgment in part and denied it in part. The district court held that summary judgment was precluded because fact issues existed as to whether correctional officials deprived one inmate of water and basic hygiene products. According to the court, the failure to provide a prisoner with toilet articles including soap, razors, combs, toothpaste, toilet paper, access to a mirror, and sanitary napkins to female prisoners constitutes denial of personal hygiene and sanitary living conditions, for the purpose of a claim challenging conditions of confinement. The court denied summary judgment on this issue. The court also found genuine issues of material fact as to whether corrections officers used excessive force against a jail inmate by placing her in a restraint chair after she allegedly threw urine and feces from her cell. The court found that the alleged act of serving food to a jail inmate on a napkin or paper towel on one occasion did not amount to a constitutional deprivation. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. District Court
TOILET PAPER

Beltran v. O'Mara, 405 F.Supp.2d 140 (D.N.H. 2005). A pretrial detainee brought a § 1983 action against correctional officers, alleging civil rights violations. The court granted summary judgment in favor of the officers in part, and denied in part. The court held that the failure to exhaust some claims did not mandate dismissal of the entire complaint. The court found that fact issues precluded summary judgment regarding whether officers used excessive force in repeatedly placing the detainee in a restraint chair. The court held that the purported withholding of toilet paper from the detainee did not deny him a minimal measure of necessities required for civilized living, as required to establish a Fourteenth Amendment violation. The only evidence that supported the allegation consisted of a complaint that the detainee was regularly made to wait over one hour for toilet paper, and there was no evidence regarding the frequency of such events. (Hillsborough County Department of Corrections, New Hampshire)

U.S. Appeals Court
HYGIENE ITEMS
TOOTHPASTE

Board v. Farnham, 394 F.3d 469 (7th Cir. 2005). Arrestees who were detained in a county jail following their arrest on murder charges brought a civil rights action against a county sheriff and jail staff following their acquittal and release from jail. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed. The appeals court held that the sheriff was not entitled to qualified immunity on the claim that he violated a detainee's right to receive adequate attention for a serious medical condition, when he allegedly deprived one detainee of toothpaste for over three weeks and another detainee for over 113 days. One detainee suffered dental pain throughout his incarceration and had to have several teeth extracted because of tooth decay. The court denied qualified immunity for jail staff who allegedly deprived a detainee of his asthma inhaler on multiple occasions. The court also denied qualified immunity on the claim that they failed to provide humane health conditions as the result of the allegedly unhealthy condition of the jail's ventilation system. The detainees alleged that the flow of black fiberglass from the ventilation system caused nosebleeds and respiratory problems, and allegedly exacerbated the serious asthma condition of one detainee. (Edgar County Jail, Illinois)

U.S. District Court
WATER

Brown v. Williams, 399 F.Supp.2d 558 (D.Del. 2005). A detainee brought an in forma pauperis action against prison officials alleging unconstitutional conditions of confinement. The district court granted summary judgment in favor of the officials. The court held that the detainee was not exposed to unreasonably high levels of contaminated water, although water from his cell sink was allegedly discolored, and the detainee fainted shortly after he drank the water. A sample of the water was taken to a laboratory for independent testing and it met or exceeded requisite standards. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
HYGIENE ITEMS
SHOES

Calhoun v. Thomas, 360 F.Supp.2d 1264 (M.D.Ala. 2005). A detainee brought a § 1983 action against a sheriff and deputy sheriff in their individual capacities, raising excessive force, deliberate indifference and conditions of confinement claims. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court held the detainee's allegation that he was deprived of shower shoes, clean clothes and a toothbrush upon his arrival at the jail did not rise to the level of a constitutional level. The court also found no violation in the allegation that he was made to sleep on the floor as the third person in a two-person cell. (Pike County Jail, Alabama)

U.S. District Court
HYGIENE ITEMS
TOOTHPASTE

Davidson v. Murray, 371 F.Supp.2d 361 (W.D.N.Y. 2005). A state prisoner brought a § 1983 action against a state corrections department, officers and prison officials, alleging unconstitutional conditions of confinement during his incarceration. The district court granted summary judgment in favor of the defendants. The court found that thirty-day keeplock confinement and loss of telephone privileges imposed on the prisoner as a disciplinary sanction did not deprive the prisoner of his procedural due process rights. According to the court, denial of basic hygiene items and cleaning supplies, such as toothpaste, soap, toilet tissue and cell

cleaning items, did not violate the prisoner's Eighth Amendment rights. (Attica Correctional Facility, New York)

U.S. Appeals Court
SINKS
TOILETS
WATER

Hearns v. Terhune, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that conditions were sufficiently serious to form the basis for an Eighth Amendment violation. The inmate alleged that there was a lack of drinkable water in the prison yard, where temperatures exceeded one hundred degrees. The inmate also alleged that conditions in disciplinary segregation created serious health hazards, including toilets that did not work, sinks that were rusted, and stagnant pools of water that were infested with insects. (Calipatria State Prison, California)

U.S. District Court
HYGIENE ITEMS

Owens v. Sebelius, 357 F.Supp.2d 1281 (D.Kan. 2005). A state prison inmate who had been returned to custody after violating his parole sued officials, challenging a deduction from his prison trust account for fees incurred for supervision while he was on parole. The prisoner alleged that the deductions caused him "undue hardships" and "denied the opportunity to maintain his sanitary hygienic needs" because he was unable to purchase hygiene items. The district court dismissed the case. The court found that the deduction did not constitute the infliction of cruel and unusual punishment, was not an impermissible ex post facto law, and did not violate the inmate's equal protection or due process rights. According to the court, the \$25 per month fee was a reasonable reimbursement for the costs of supervision, such as electronic monitoring equipment, drug screening, and surveillance services. The court noted that the inmate did not allege that he was denied free basic hygiene supplies. (Winfield Correctional Facility, Kansas)

U.S. Appeals Court
TOILETS
WATER

Surprenant v. Rivas, 424 F.3d 5 (1st Cir. 2005). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging that he was falsely accused of an infraction, deprived of due process in disciplinary proceedings, and subjected to unconstitutional conditions of confinement. A jury found the defendants liable on three counts and the district court denied judgment as a matter of law for the defendants. The defendants appealed. The appeals court affirmed. The court held conditions of confinement were shown to be constitutionally deficient, where the detainee was placed in around-the-clock segregation with the exception of a five-minute shower break every third day, all hygiene items were withheld from him, he could only access water--including water to flush his toilet--at the discretion of individual officers, and was subjected daily to multiple strip searches that required him to place his unwashed hands into his mouth. (Hillsborough County Jail, New Hampshire)

2006

U.S. District Court
HYGIENE ITEMS
TOILETS

J.P. v. Taft, 439 F.Supp.2d 793 (S.D. Ohio 2006). A former juvenile corrections facility inmate sued the facility and individuals, claiming the lack of access to courts to pursue a claim of injury from being assaulted by an officer, and claims of substandard accommodations. The district court denied the defendants' motion for summary judgment. The court held that the inmate had standing to bring a claim that the facility interfered with his access to courts by not making adequate efforts to provide attorneys, and that the inmate stated a claim that the facility interfered with his right of access to court, by not providing an attorney to pursue a legitimate claim that officers unconstitutionally restricted his bathroom privileges. According to the court, the inmate did not state a claim that conditions of confinement violated his rights under the Eighth Amendment when he alleged that showers were cold, worms were coming in through a drain, and his personal hygiene materials had been lost during a move from one cell to another. The court found that these problems were insufficiently serious. The court held that the inmate stated claim that conditions of confinement violated his rights under Eighth Amendment, when he alleged that officers frequently denied inmates the opportunity to use a rest room, as a disciplinary measure, forcing them to urinate into objects including latex gloves. (Ohio Department of Youth Services, Marion Juvenile Correctional Facility)

U.S. Appeals Court
HYGIENE ITEMS

Johnson v. Blaukat, 453 F.3d 1108 (8th Cir. 2006). A female inmate brought claims against correctional officers, supervisors, and a county alleging that her constitutional rights were violated by the alleged use of excessive force. The district court entered summary judgment on the claims and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that: (1) genuine issues of fact precluded summary judgment on the claim that officers used excessive force in violation of the Cruel and Unusual Punishment Clause; (2) the supervisor's actions in allegedly using a racial epithet against another inmate and in allegedly removing feminine hygiene products from the cell was not cruel and unusual punishment; and (3) the purported violation of county policies that were not alleged to be unconstitutional provided no basis for civil rights liability for the county. (Jasper County Detention Center)

2007

U.S. District Court
BEDDING

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. According to the court, the alleged conditions from overcrowding at a District of Columbia jail--showers infested with bacteria, standing water, various diseases and hundreds of unsanitary and defective mattresses, some of which contained roaches and other insects, did not constitute the deprivation of basic human needs, as required for jail overcrowding to constitute cruel and unusual punishment. The court found that the detainee's allegations that due to lack of heating and ventilation at the jail he suffered from temperatures ranging from 30 to 40 degrees during the winter, that he was not provided with sufficient blankets for cold jail cells, and that such actions were taken with deliberate indifference to his needs and pursuant to policy of Department of Corrections (DOC) were sufficient to state

a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court noted that warmth is a basic human need, the deprivation of which can amount to a violation of Eighth Amendment protection against cruel and unusual punishment. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
SINKS
WATER

Desroche v. Strain, 507 F.Supp.2d 571 (E.D.La. 2007). A pre-trial detainee brought a pro se, in forma pauperis action against prison officials, alleging improper conditions of confinement, negligent medical treatment, invasion of privacy, and excessive force. The district court dismissed the action. The court held that the alleged conditions of the detainee's confinement, including being required to sleep on the floor of an overcrowded holding tank, being deprived of a mattress, and being provided with water only in a dirty sink, if proven, did not violate his Eighth Amendment or due process rights, given that he experienced such conditions for only ten days, and that use of sink did not cause him to suffer disease or other serious harm. (River Parish Correction Center, Louisiana)

U.S. District Court
HYGIENE ITEMS
ISOLATION
CLOTHING

Murphy v. Franklin, 510 F.Supp.2d 558 (M.D.Ala. 2007). A pretrial detainee brought a § 1983 action against a sheriff and jail administrator, alleging that he was subjected to punitive, degrading and inhumane treatment when, without explanation, he was shackled hands-to-feet to the toilet in an isolation cell, and, on another occasion, shackled to his cot. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that although the detainee's complaint against the sheriff and jail administrator did not allege that he was subjected to mistreatment pursuant to any specific official policy, the detainee's allegations that the sheriff promulgated all policies and procedures in the county jail, that the detainee was placed in an isolation cell and shackled hands-to-feet to the toilet, which was nothing more than a hole in the ground covered by a grate, and that the sheriff ordered the detainee removed from this cell for an interview and then reshackled to the toilet grate, were sufficiently specific to state a § 1983 claim against the sheriff under the theory of supervisory liability. The detainee alleged that without explanation, he was moved into a 'lockdown' cell for one day, in which his right hand was cuffed to the frame of his cot and his right leg was shackled to the other end of the cot's frame. Again without explanation, he was allegedly then moved to an isolation cell, where he was shackled hands-to-feet to the toilet, which is actually nothing more than a hole in the ground. He alleged that he was held in this configuration for almost 12 days and was not released to allow urination or defecation, which caused him to soil himself, and that he was also not given any personal necessities such as clean, dry clothing, personal hygiene items, or bedding. (Elmore County Jail, Alabama)

U.S. Appeals Court
HYGIENE ITEMS

Whittington v. Ortiz, 472 F.3d 804 (10th Cir. 2007). A state prisoner brought a § 1983 action alleging his rights were violated by the denial of access to free hygiene items. The district court dismissed the action and the prisoner appealed. The appeals court held that the prison's failure to timely respond to the prisoner's Step Three grievance regarding access to hygiene products established that the prisoner exhausted his available administrative remedies, as required by PLRA. A Step 3 grievance requires the prison to respond within 45 days. 196 days after he filed his Step 3 grievance he still had not received a response and then filed suit. The court held that the prisoner's elaboration on the way the prison's policies caused him to suffer dental problems satisfied his obligation to state an injury to support his Eighth Amendment claim but did not equate to a delay in dental treatment claim. The prisoner contended that he was unable to pay for hygiene items out of his prison income after the prison debits his prison account to pay for restitution, medical care, legal photocopies, and legal postage. (Colorado Department of Corrections)

2008

U.S. Appeals Court
BEDDING

Hubbard v. Taylor, 538 F.3d 229 (3rd Cir. 2008). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds. The district court granted the defendants' motion for summary judgment and the detainees appealed. The appeals court vacated and remanded. On remand the district court granted the defendants' renewed motions for summary judgment and the detainees again appealed. The appeals court affirmed. The court held that triple-celling of the pretrial detainees was rationally related to prison officials' legitimate governmental interest in trying to manage overcrowding conditions at the prison, for the purposes of the detainees' claim that triple-celling violated their Fourteenth Amendment due process right. The court found that requiring the detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights. The court noted that although many pretrial detainees did spend a substantial amount of time on floor mattresses, they also had access to 3,900 square foot dayrooms, there was no evidence that the use of the floor mattresses resulted in disease or the splashing of human waste upon the detainees, and over \$2.8 million dollars had been spent on capital improvements during the past five years to maintain or elevate the living conditions for prisoners. The court noted that even if the detainees' due process constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the prison officials to qualified immunity in the detainees' suit under § 1983 challenging conditions of their confinement. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
HYGIENE ITEMS

Hubbs v. County of San Bernardino, CA, 538 F.Supp.2d 1254 (C.D.Cal. 2008). A civilly committed sexually violent predator (SVP) brought a civil rights action against a sheriff and county claiming numerous violations of his constitutional and statutory rights. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the SVP stated a civil rights due process claim against the county and a civil rights due process claim against the sheriff and county regarding conditions of his confinement at the jail. The SVP alleged that policies regarding conditions of confinement and denial of medical care injured him, and that the sheriff did not properly train his subordinate employees to prevent those injuries. The SVP alleged that the defendants did not provide prescribed medications and that a holding cell was cold and did not have a mattress, hygiene supplies, or bed roll. (West Valley Detention Center, San Bernardino County, California)

- U.S. District Court
SHOWERS
SINKS
- Lewis v. Ollison*, 571 F.Supp.2d 1162 (C.D.Cal. 2008). A state prisoner filed a § 1983 action against prison officials, alleging violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that a temporary shower policy of escorting prisoners from their cells to the shower room and back wearing only boxer shorts and shower shoes, which was adopted by the prison due to security concerns, created at most an inconvenience, but not a significant interference with the Islamic religious clothing requirement. The clothing requirement directs Muslim men to exercise modesty by covering their “awrah,” which is a portion of the body from the navel to the knee, from others’ gaze. The court found that the policy did not violate RLUIPA, since Muslims did not have to shower every day to practice their religion and the prisoner could have cleansed himself in his cell sink. The court also found that the policy was reasonably related to a legitimate penological interest in maintaining prison safety and security. The court held that the rights of the Muslim prisoner under RLUIPA to practice his religion of Islam had not been subjected to a substantial burden by the policy that limited the prisoner to the possession of no more than 12 ounces of scented oil in his cell, and limited him to buying no more than 8 ounces of scented oil per purchase order. According to the court, the rule had been drafted after consultation with a Muslim imam and permitted prisoners to be in the possession of religious prayer oil that served their religious purposes for many weeks, if not many months. (Ironwood State Prison, California)
- U.S. Appeals Court
BEDDING
- Pierce v. County of Orange*, 519 F.3d 985 (9th Cir. 2008). Pretrial detainees in a county’s jail facilities brought a § 1983 class action suit against the county and its sheriff seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees’ claims and the detainees appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the injunctive orders relating to the jail’s reading materials, mattresses and beds, law books, population caps, sleep, blankets, dayroom access (not less than two hours each day), telephone access and communication with jailhouse lawyers were not necessary to correct current ongoing violations of the pretrial detainees’ constitutional rights. The court affirmed termination of 12 of the injunctive orders, but found that the district court erred in its finding that two orders were unnecessary. (Orange County, California)
- U.S. Appeals Court
SHOWERS
TOILETS
- Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008). Pretrial detainees in a county’s jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees’ claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that injunctive orders relating to the county jail’s reading materials, mattresses and beds, law books, population caps, sleep, blankets, telephone access, and communication with jailhouse lawyers were not necessary to current the current and ongoing violations of pretrial detainees’ constitutional rights. The court found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The county did not offer any legitimate rationale for maintaining inaccessible bathrooms, sinks, showers, and other fixtures in the housing areas and common spaces assigned to mobility and dexterity impaired detainees, and the county offered no explanation or justification for the significant differences between the vocational and recreational activities available to non-disabled and disabled detainees. (Orange County Jail System, California)
- U.S. Appeals Court
BEDDING
- Townsend v. Fuchs*, 522 F.3d 765 (7th Cir. 2008). A state inmate filed a civil rights suit against a prison official and a correctional officer alleging violation of his due process rights in placing him in administrative segregation for 59 days, and violation of his Eighth Amendment right against cruel and unusual punishment due to unsanitary conditions in segregation. The district court granted the official’s motion for partial summary judgment. The court later denied the inmate’s motion to amend to add a warden as a defendant and entered summary judgment for the prison official and correctional officer. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court found that the inmate’s sleeping on a moldy and wet mattress involved a sufficiently serious prison condition to deny a civilized measure of life’s necessities, as required for an Eighth Amendment claim. The court held that summary judgment on the issue of deliberate indifference was precluded by a genuine issue of material fact as to whether a correctional officer knew about the condition of the inmate’s wet and moldy mattress. (New Lisbon Correctional Institution, Wisconsin)
- U.S. District Court
TOILETS
- Wesolowski v. Kamas*, 590 F.Supp.2d 431 (W.D.N.Y. 2008). A state prisoner brought a § 1983 action against correction officers and a superintendent, alleging that the defendants subjected him to cruel and unusual punishment and denied him equal protection of the law, in violation of his Eighth and Fourteenth Amendment rights. The district court granted the defendants’ motion for summary judgment. The court held that the prisoner’s rights under the Eighth and Fourteenth Amendments were not violated by a soiled mattress, the plexiglass shield over the front of his cell, another inmate’s overflowed toilet, the use of a single slot to pass objects through a cell door, the denial of his preferred cleaning materials when other suitable materials were made available to him, or a single two-week period during which the plaintiff’s cell was not cleaned. The court noted that the prisoner’s complaints related principally to his personal preferences as to the cleanliness of his cell. Prison officials did not display deliberate indifference to the prisoner’s complaints, but instead responded quickly and appropriately, in that the prisoner received a new mattress within two days of his request, and he was moved to a new cell without a plexiglass cover within five days of his complaint. (Southport Correctional Facility, New York)
- U.S. District Court
TOILET PAPER
- Zavala v. Barnik*, 545 F.Supp.2d 1051 (C.D.Cal. 2008). A state inmate filed a civil rights complaint in state court alleging that a prison official threw a roll of toilet paper at him, spit on him, and yelled profanities at him. After removal to federal court the official moved to dismiss. The district court dismissed the case. The court held that profanities allegedly directed by the prison official to the inmate did not evidence racial or discriminatory animus, where the official only referred to “you people.” The court held that the inmate’s alleged deprivation of toilet paper by the official did not rise to the level of an unquestioned and serious deprivation of a basic human need necessary to establish an Eighth Amendment violation, where the incident involved a de minimis, apparently brief, one-time

deprivation. The court found that the official did not violate the inmate's Eighth Amendment rights by hitting the inmate on the leg with a toilet paper roll on one occasion, absent a showing of any physical injury. (Ironwood State Prison, California)

2009

- U.S. District Court
CLOTHING
HYGIENE ITEMS
- Bowers v. Pollard*, 602 F.Supp.2d 977 (E.D.Wis. 2009). An inmate brought a § 1983 action against correctional facility officials, challenging the conditions of his confinement. The court held that the correctional facility's enforcement of a behavior action plan that regularly denied the inmate a sleeping mattress, occasionally required him to wear only a segregation smock or paper gown, and subjected him to frequent restraint did not deny the inmate the minimal civilized measure of life's necessities and was targeted at his misconduct, and thus the plan did not violate the inmate's Eighth Amendment rights. The court noted that the inmate's cell was heated to 73 degrees, he was generally provided some form of dress, he was granted access to hygiene items, and he was only denied a mattress and other possessions after he used them to perpetrate self-abusive behavior, covered his cell with excrement and blood, and injured facility staff. (Green Bay Correctional Institution, Wisconsin)
- U.S. District Court
HYGIENE ITEMS
TOILET PAPER
- Cusamano v. Sobek*, 604 F.Supp.2d 416 (N.D.N.Y. 2009). A former state prisoner brought a pro se action against department of corrections employees, alleging violation of his First, Eighth and Fourteenth Amendment rights as well as the New York Constitution. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact regarding whether a corrections officer was present during, and participated in, the alleged assault of the prisoner. The court held that the denial of access to toilet paper and soap during the prisoner's confinement in a special housing unit did not constitute an unconstitutional condition of confinement, as required for the prisoner's inadequate prison conditions claim against corrections officers under the Eighth Amendment. The court noted that the deprivation of toilet paper and soap was not continuous, there was no evidence that the prisoner was deprived of any other toiletry items, and there was no evidence that the prisoner requested toilet paper during medical visits. (Gouverneur Correctional Facility, Clinton Correctional Facility, New York)
- U.S. District Court
ISOLATION
SHOWERS
- Gray v. Hernandez*, 651 F.Supp.2d 1167 (S.D.Cal. 2009). A state prisoner brought a § 1983 action, seeking damages and declaratory and injunctive relief, against an acting warden, captain, and two employees in a prison library. The prisoner alleged he was placed in administrative segregation pending the investigation of rule violation charges filed by the two employees, accusing him of attempting to extort money from them by offering to settle his potential suit against them. The district court held that the prisoner sufficiently alleged a chilling of his First Amendment right to file grievances and pursue civil rights litigation by alleging that his placement in administrative segregation caused him mental and financial harms. The court held that the prisoner's allegations that his placement in administrative segregation forced him to endure 24-hour lock-down, lack of medical treatment, only one shower every three days, and lack of exercise did not constitute an allegation of a dramatic departure from the standard conditions of confinement, as would invoke procedural due process protections. The court noted that an inmate does not have a liberty interest, for purposes of procedural due process, in being housed at a particular institution or in avoiding isolation or separation from the general prison population, unless the proposed transfer will subject the inmate to exceptionally more onerous living conditions, such as those experienced by inmates at a "Supermax" facility. (Mule Creek State Prison, High Desert State Prison, Donovan State Prison, California)
- U.S. District Court
HAIR
SHOWERS
- Greene v. Furman*, 610 F.Supp.2d 234 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 action against corrections officials, alleging various constitutional violations arising out of disciplinary proceedings instituted after he allegedly spit at another inmate. The district court dismissed the case. The court held that an allegation that a corrections officer issued a false misbehavior report against the inmate failed to state a claim for a due process violation. The court noted that the issuance of false misbehavior reports against an inmate by corrections officers is insufficient on its own to establish a denial of due process. The court held that the allegation that the inmate was denied exercise, showers and haircuts after he became involved in an altercation with another inmate failed to state a claim for an Eighth Amendment violation based on his conditions of confinement, where the deprivations alleged were not atypical, did not result in any physical injury, and did not amount to cruel and unusual punishment. Southport Correctional Facility, New York)
- U.S. District Court
BEDDING
RODENTS/PESTS
WATER
- Johnson v. Boyd*, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. The court held that a substantial risk of harm to the prisoner's health or safety did not result from the prisoner's detention, where, among other things, a professional exterminator routinely sprayed the facility for rodents and bugs, exposed wires from ceiling light fixtures that had been pulled down by inmates were not hazardous or were not located in cells where the prisoner had been confined, the ventilation system was operational and only temporarily malfunctioned when inmates put paper and other materials in vents, fresh water was located in coolers in pods and was brought to the prisoner's cell several times per day, and the prisoner had been provided with a concrete sleeping slab and extra blankets. (Crittenden County Detention Center, Arkansas)
- U.S. District Court
SHOWERS
- Malles v. Lehigh County*, 639 F.Supp.2d 566 (E.D.Pa. 2009). A prisoner, who allegedly contracted Methicillin Resistant Staphylococcus Aureus (MRSA) while incarcerated at a county prison, brought an action under § 1983 against the county prison and the prison medical provider, alleging that the defendants unconstitutionally failed to provide him timely, adequate medical care and to protect him from getting infected, and that the provider was negligent under state law. The district court granted the defendant's motion for summary judgment. The court held that the alleged failure of the county prison and the company which contracted with the county to provide medical services to

inmates at the prison to quarantine inmates infected with MRSA, to properly clean and maintain shower facilities, to warn inmates about MRSA and educate them about prevention, and generally to take more precautions against the spread of MRSA did not deprive the prisoner who allegedly contracted MRSA at the prison of life's necessities according to contemporary standard of decency, as would constitute cruel and unusual punishment under Eighth Amendment. According to the court, the county prison and company which contracted with the county to provide medical services to inmates were not deliberately indifferent to the risk that the prisoner would contract MRSA in prison, as would violate the Eighth Amendment, where the prison and company engaged in some efforts to stop the spread of MRSA, even if they did not do everything they could or planned to do. (Lehigh County, Penn., and PrimeCare Medical, Inc.)

U.S. District Court
SHOWERS

Schaub v. County of Olmsted, 656 F.Supp.2d 990 (D.Minn. 2009). An inmate at a county detention center brought an action against a county, detention center, center director, probation officer, and several unnamed defendants, alleging that he was injured as result of failure to accommodate his medical condition of paraplegia. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether members of county detention center staff were deliberately indifferent to the inmate's serious medical needs arising from paraplegia; (2) whether failure to oversee nursing staff at the detention center was the "moving force" behind the delay in treating the inmate's wounds and pressure sores on his return to the county detention center; (3) whether the county detention center's unwritten policy barring medical care to work-release inmates was the "moving force" behind the inmate's injuries during his first two months in the center; and (4) whether the county detention center's modifications in permitting the inmate to attend to his hygiene at home, or rely on nursing staff to bathe him, were reasonable, and whether the inmate was excluded from appropriate medical care because of his disability. (Olmsted County Adult Detention Center, Minnesota)

U.S. District Court
TOILETS

Shariff v. Coombe, 655 F.Supp.2d 274 (S.D.N.Y. 2009). Disabled prisoners who depended on wheelchairs for mobility filed an action against a state and its employees asserting claims pursuant to Title II of the Americans with Disabilities Act (ADA), Title V of Rehabilitation Act, New York State Correction Law, and First, Eighth, and Fourteenth Amendments. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. According to the court, the inability of disabled prisoners who depended on wheelchairs for mobility to access restrooms throughout a state prison rose to the level of an objective violation of the Eighth Amendment, where the prisoners soiled themselves up to several times per week. The court noted that the sheer frequency with which those incidents occurred, not to mention the physical injuries that at least some prisoners had suffered in attempting to use an inaccessible restroom, indicated that the prisoners had been denied a minimal civilized measure of life's necessities or there was an unreasonable risk of serious damage to their future health. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison and its employees were deliberately indifferent to the prisoners' restroom needs. (New York State Depy. of Correctional Services, Green Haven Correctional Facility)

U.S. Appeals Court
HAIR

Smith v. Ozmint, 578 F.3d 246 (4th Cir. 2009). A South Carolina prisoner brought an action alleging that a prison grooming policy violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The South Carolina Department of Corrections moved for summary judgment and the district court granted the motion. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prison's policy requiring maximum security inmates to wear closely cropped hair, and which allowed for implementation of that policy through physical force, imposed a substantial burden on the inmate's religious practice within the meaning of the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy compelled an inmate to modify his behavior in violation of his genuinely held religious beliefs. According to the court, an affidavit offered by the Department of Corrections in support of summary judgment did not demonstrate that the prison policy of forcibly shaving the heads of maximum security unit prisoners who wore long hair as a matter of religious belief furthered a compelling governmental interest in space utilization, hygiene, or security by the least restrictive means under RLUIPA. The court noted that the affidavit dealt solely with the grooming policy applied to special management unit prisoners, and the Department failed to explain how the rationale offered for not accommodating special management unit prisoners applied to maximum security unit prisoners. (South Carolina Department of Corrections, Maximum Security Unit at Kirkland Correctional Institution)

2010

U.S. District Court
HYGIENE ITEMS
TOILET PAPER

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court held that the prisoner's allegations were sufficient to state a colorable § 1983 claim that he was deprived of personal hygienic items and sanitary conditions in violation of the Eighth Amendment, where the prisoner alleged he was regularly deprived of toilet paper and soap, that he was only allowed to shower twice a week, that he was made to strip in dirty showers full of filth and insects, that the unit in which he resided was littered with food and urine and contained open sewers, and that he suffered illness as a result. (High Desert State Prison, Nevada)

- U.S. District Court
SHAVING
Braithwaite v. Hinkle, 752 F.Supp.2d 692 (E.D.Va. 2010). A prisoner, proceeding pro se, brought a § 1983 action against a prison officer, alleging violations of his First Amendment right to free exercise of religion and his Eighth Amendment right to reasonable medical care. Following dismissal of the Eighth Amendment claim, the officer filed a motion for summary judgment. The district court granted the motion. The court held that the prison policy requiring prisoners to shave unless exempted for medical reasons did not violate the Sunni Muslim prisoner's First Amendment right to free exercise of religion, where the policy promoted the prison's strong interests in safety, sanitation and identification of inmates. The court noted that the inmate had other methods to practice his religion, and the policy did not allow forcible shaving of inmates. (Greensville Correctional Center, Virginia)
- U.S. Appeals Court
TOOTHPASTE
Flanory v. Bonn, 604 F.3d 249 (6th Cir. 2010). A prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the Eighth Amendment. The district court granted the defendants' motions to dismiss. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's deprivation of dental care was not temporary, as required for his Eighth Amendment claim, where the inmate was denied toothpaste for 337 days. According to the court, the prisoner's deprivation of toothpaste by the prison caused him physical injury, as required for his Eighth Amendment claim, where the inmate was diagnosed with periodontal disease of the gums and one tooth was extracted. The court held that the prisoner's allegations that he was denied toothpaste for 337 days, that he filed various grievances about the deprivation, and that he was diagnosed with periodontal disease of the gums and one tooth was extracted as a result of the deprivation, were sufficient to plead that prison officials were deliberately indifferent to his hygiene needs, as required for his Eighth Amendment claims. (Newberry Correctional Facility, Michigan Department of Corrections)
- U.S. Appeals Court
HYGIENE ITEMS
Gee v. Pacheco, 627 F.3d 1178 (10th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court dismissed the complaint with prejudice. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's allegations that a prison official intentionally confiscated and destroyed letters sent to him by persons outside the prison "under the guise" of sticker and perfume violations, for the purpose of harassing him, were sufficient to plead violations of his First Amendment speech rights. The court also found that the prisoner's allegations that a prison official returned to him outgoing letters that had "appropriate postage affixed without reason" for failure to mail them, were sufficient to plead a violation of the prisoner's First Amendment speech rights. The court found an alleged First Amendment speech rights violation with the prisoner's allegations that he was given a letter from his sister and that it was confiscated from him due to his incommunicado status, but that it was never returned to him. The court held that the prisoner's allegations that prison officials confiscated canteen items, deprived him of hygiene items for 25 hours and incarcerated him for four weeks in an isolation cell with limited outdoor recreation and lack of access to hygiene items, were insufficient to state a § 1983 claim for violations of the Eighth Amendment. (Wyoming State Penitentiary)
- 2011**
- U.S. District Court
RODENTS/PESTS
Solomon v. Nassau County, 759 F.Supp.2d 251 (E.D.N.Y. 2011). A pretrial detainee brought an action against a county, jail, sheriff, and undersheriff, alleging that his civil rights were violated when he was bitten by a rodent in his jail cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that because the sheriff and undersheriff were not "personally involved" in any alleged failure to maintain a safe prison environment, they were not subject to § 1983 liability for the injury to the pretrial detainee who was bitten by a rodent in his jail cell. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pretrial detainee was exposed to a substantial risk of contracting rabies or another dangerous disease from a rodent bite, and whether the county was aware of the substantial risk of serious harm. According to the court, although protection of inmates from harmful chemicals and the need to prevent inmates from using poisons, glue traps, or door sweeps as weapons were legitimate penological interests that supported the reasonableness of the jail's pest control plan, a genuine issue of fact existed as to whether the county was adequately complying with the plan, and whether the lack of compliance could have resulted in the alleged substantial risk of harm. (Nassau County Correctional Center, New York)
- 2012**
- U.S. District Court
BEDDING
Bell v. Luna, 856 F.Supp.2d 388 (D.Conn. 2012). A state inmate brought a § 1983 action against prison officials and a prison doctor, alleging that the defendants subjected him to unconstitutional conditions of confinement and showed deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the state prison doctor was not deliberately indifferent to the inmate's health in failing to take sufficient measures to treat the inmate's joint and back pain, or in failing to prescribe the inmate with an analgesic cream, as would violate the inmate's Eighth Amendment rights. The court found that forcing the inmate to go nearly seven months with a torn, partially unstuffed, unhygienic mattress was a condition of confinement sufficiently serious to implicate the Eighth Amendment. According to the court, the inmate's allegations that a unit manager "willfully, wantonly, and maliciously disregarded" the inmate's repeated requests for an adequate and hygienic mattress stated a claim under § 1983 against the manager for cruel and unusual punishment in violation of his Eighth Amendment rights. The court held that the unit manager was not entitled to qualified immunity from the inmate's § 1983 claim where the law of the Second Circuit would have put the manager on notice at the time of the alleged violation that failing to provide the inmate with an hygienic, working mattress for over half a year ran afoul of the Eighth Amendment. (MacDougall-Walker Correctional Institution, Connecticut)
- U.S. Appeals Court
CLOTHING
Gruenberg v. Gempeler, 697 F.3d 573 (7th Cir. 2012). A state prisoner, proceeding pro se, filed a § 1983 action against various prison officials, guards, and medical staff, alleging violations of the Eighth Amendment. The district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) the prisoner did not have a clearly established right to not be continually restrained without clothing or

cover in a cell for five days following his ingestion of a handcuff key, the master key for belt restraints, and the key used for opening cell doors, where restraint had been imposed to keep the prisoner from re-ingesting those keys; (2) the continuous restraint of the prisoner without clothing or cover in a cell for five days did not violate his Fourteenth Amendment due process rights; (3) the prisoner's Fourth Amendment and Fourteenth Amendment substantive due process claims were barred; and (4) the district court did not abuse its discretion by ruling that the prisoner was competent to advance his case and was not entitled to appointed counsel. (Waupun Correction Institution, Wisconsin)

U.S. Appeals Court
SHOWERS
TOILETS

Jaros v. Illinois Dept. of Corrections, 684 F.3d 667 (7th Cir. 2012). A former inmate sued the Illinois Department of Corrections, its Director, and several employees claiming violations of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Eighth Amendment. The district court dismissed the complaint for failure to state a claim, and the former inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the inmate's allegations that his use of the toilets and showers at the prison was made more difficult by the absence of grab bars did not state an Eighth Amendment claim, where the inmate was able to shower four times a month. He also missed meals on occasion because he could not walk fast enough to the cafeteria. The court found that the prisoner pleaded a plausible claim for failure to make reasonable accommodations under the Rehabilitation Act where he alleged that the Department of Corrections refused to accommodate his disability, and consequently kept him from accessing meals and showers on the same basis as other inmates. (Vandalia Correctional Center, Illinois)

U.S. Appeals Court
HYGIENE

Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012). Following a pretrial detainee's death while incarcerated, his parents, representing his estate filed suit pursuant to § 1983, alleging among other things that jail officials and medical personnel had deprived the pretrial detainee of due process by exhibiting deliberate indifference to his declining mental and physical condition. The district court entered summary judgment against the estate. The estate filed a second suit reasserting the state wrongful death claims that the judge in the first suit had dismissed without prejudice after disposing of the federal claims. The district court dismissed that case on the basis of collateral estoppel, and the estate appealed both judgments. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether jail officials were deliberately indifferent to the pretrial detainee's conditions of confinement, and whether his conditions of confinement were sufficiently serious to support his Fourteenth Amendment due process claim. The court noted that whether the detainee himself created the unsanitary conditions was a fact relevant to the claim, but given detainee's mental condition, it did not foreclose the claim. The court held that jail officials did not have notice of a substantial risk that the mentally ill pretrial detainee might be assaulted by other inmates, as required to support the pretrial detainee's claim of deliberate indifference in violation of due process. The court noted that while jail personnel were aware that the detainee had a hygiene problem, they had no notice that he was at risk of assault because of that problem, particularly within the more secure confines of the administrative segregation unit. The court found that neither jail guards or supervisors were deliberately indifferent to the risk that the mentally ill pretrial detainee might engage in a behavior such as compulsive water drinking that would cause him to die within a matter of hours and did not consciously disregard that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. District Court
BEDDING
SHOWERS
TOILETS

Wilkins-Jones v. County of Alameda, 859 F.Supp.2d 1039 (N.D.Cal. 2012). A detainee at a county jail who had limited mobility and deformed hands as a result of systemic lupus and rheumatoid arthritis brought an action against the contractor that provided medical care assessment services for detainees, and its employees, alleging violations of Title II of the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), and the California Unruh Civil Rights Act. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the private contractor was not liable as a public entity or instrumentality under the ADA; (2) the contractor qualified as a "business establishment," under the California Unruh Civil Rights Act; (3) the complaint properly asserted a deprivation of full and equal accommodations, as required to state a claim under the California Unruh Civil Rights Act; (4) the allegations were insufficient to assert intentional discrimination, as required to state a claim against the contractor for violation of the California Unruh Civil Rights Act; (5) the CDPA applied to county jails and the accommodations and services provided therein; and (6) the allegations stated a claim against contractor under the CDPA. The jail inmate who had limited mobility and deformed hands alleged that she was unable to use the toilet in the jail as needed, causing her injuries, and that she was deprived of access to jail's facilities, beds, showers, walkways, and benches. According to the court, this properly asserted a deprivation of full and equal accommodations, as required to state a claim against the private contractor that contracted with county to provide medical care assessment services for the county jail. (County of Alameda, California)

2013

U.S. District Court
HOUSEKEEPING
RODENTS/PESTS

Ames v. Randle, 933 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought § 1983 Eighth Amendment claims against various employees of the Illinois Department of Corrections (IDOC) who allegedly were responsible for the conditions of the inmate's confinement. The defendants filed a motion to dismiss. The court denied the motion, finding that the inmate adequately pled that Illinois prison officials were deliberately indifferent, as required to state a § 1983 Eighth Amendment claim. According to the court, the inmate alleged that he repeatedly advised the official about the prison's detrimental living conditions and that the official did not make an effort to remedy the conditions, that he informed another official about the intolerable living conditions and that this official did not make an effort to remedy the conditions, and that he discussed the intolerable living conditions with other officials, each of whom also failed to make any efforts to remedy the living conditions. The inmate claimed that he was subjected to unsanitary conditions, a lack of ventilation, and continuous lighting that interfered with his sleep. He also alleged that his housing area had dried bodily fluids on the wall of his cell and a strong odor of ammonia from his uncleaned toilet, that there was pest

infestation accompanied by filth and feces, and that there was a complete lack of basic cleaning supplies or even garbage bags. He also cited filthy soiled bedding, missing or dilapidated, and sometimes dangerously damaged cell furniture and fixtures, and badly peeling toxic paint. The inmate suffered from endocarditis, an infection of the lining of the heart, which he claimed was due to the conditions of his confinement, and from which his “numerous, almost constant, fungal infections” stemmed. (Stateville Correctional Center, Illinois Department of Corrections)

U.S. Appeals Court
HOUSEKEEPING
SHOWERS
TOILETS

Budd v. Motley, 711 F.3d 840 (7th Cir. 2013). A state inmate filed a § 1983 action alleging that, as a pretrial detainee, he was subjected to unconstitutional conditions of confinement at a county jail and that the sheriff was deliberately indifferent to his medical needs. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee's allegations were sufficient to state a plausible claim under the Due Process Clause for subjecting him to unconstitutional conditions of confinement. The prisoner alleged that: (1) on one occasion he was confined with eight inmates in a portion of the county jail intended for three; (2) he had to sleep on the floor alongside broken windows and cracked toilets; (3) on another occasion he and other inmates had to sleep on the floor even though shower water leaked there; (4) cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating and cooling system; (5) inmates were denied any recreation; and (6) the jail furnished inmates with no supplies to clean for themselves. (Edgar County Jail, Illinois)

U.S. District Court
BEDDING
TOILETS

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials “triple-celled” inmates, allegedly leading to unsanitary conditions, amounted to a “custom” for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity. (Atlantic County Justice Facility, New Jersey)

U.S. Appeals Court
BEDDING

Earl v. Racine County Jail, 718 F.3d 689 (7th Cir. 2013). An inmate brought a § 1983 action against a county jail and various jail officers, asserting claims for denial of due process and deliberate indifference to his serious medical condition. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's five days on suicide watch were neither long enough nor harsh enough to deprive him of a due-process-protected liberty interest, where: (1) the only changes to the inmate's meals were that trays upon which food was served were disposable foam rather than plastic; (2) eating utensils were quickly removed after each meal; (3) the inmate was not denied bedding but was given a mattress and a blanket; (4) the inmate was denied writing materials for only the first 48 hours; and (5) rather than being prohibited human contact, deputies were assigned to closely and personally monitor the inmate to ensure his safety. The court found that jail officers were not deliberately indifferent to the inmate's allergic reaction to suicide garments in violation of the Eighth Amendment. The court noted that after the inmate told an officer about his allergic reaction to a suicide gown, the officer called a nurse who immediately examined the inmate and gave him cream and medication, and the officers appropriately deferred to the nurse's medical decision that the inmate did not need different garments because there was no sign of rash or bumps on the inmate. (Racine County Jail, Wisconsin)

U.S. District Court
HOUSEKEEPING
TOILETS

Florio v. Canty, 954 F.Supp.2d 227 (S.D.N.Y. 2013). A prisoner, proceeding pro se, brought a § 1983 action against a warden and a corrections officer, alleging violations of the Eighth Amendment. The defendants moved to dismiss. The district court granted the motion. The court held that the prisoner's exposure to human waste on two occasions, for a total of less than a few hours, did not give rise to a serious risk of substantial harm. The prisoner alleged that prison officials waited 10 to 30 minutes after two separate incidents of a toilet overflowing to release the prisoner from his cell and having the prisoner clean the cell with inadequate cleaning gear and without training, allegedly resulting in the prisoner developing a foot fungus. The court held that this was not deliberate indifference to a substantial risk to his health and safety, as would violate the Eighth Amendment. The court noted that officials acted to alleviate the unsanitary conditions, the overflow also occurred in approximately 20 other cells, and the prisoner was not prevented from bathing or washing his clothes after the incidents. (Anna M. Kross Center, Rikers Island, New York City Department of Corrections)

U.S. District Court
HOT WATER

Grohs v. Yatauro, 984 F.Supp.2d 273 (D.N.J. 2013). A civilly-committed resident at a special treatment unit (STU) operated by the New Jersey Department of Corrections (NJDOC) brought action against NJDOC officials, alleging violations of his substantive due process rights under § 1983. The district court held that the resident's claims against the officials in their official capacities were barred by sovereign immunity. The court held that the resident's allegations adequately pled the officials' personal involvement in his complaint that: (1) there were visibly leaking steam pipes in a special treatment unit (STU) for which trash cans were used to collect water; (2) NJDOC officials personally toured STU; (3) STU received numerous written complaints from residents about inadequate hot water; and (4) an STU assistant administrator told the resident that defective piping valves were too expensive to repair. The court found that the officials were subject to liability under § 1983 in their individual capacities. The court held that NJDOC officials were not entitled to qualified immunity from the civilly committed resident's § 1983 conditions of civil commitment

claim under the Due Process Clause, arising from inadequate hot water at a special treatment unit (STU) in which he was housed. (Special Treatment Unit, Avenel, Middlesex County, New Jersey)

U.S. Appeals Court
SHOWERS

Hardaway v. Meyerhoff, 734 F.3d 740 (7th Cir. 2013). A state prisoner who had spent six months in segregation as punishment for a disciplinary misconduct charge which was later expunged, filed a § 1983 action, alleging that the segregation violated his due process rights. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's placement in disciplinary segregation in a cell with a solid metal door and a confrontational cell mate for 182 days, with only weekly access to the shower and the recreation yard, did not amount to atypical and significant hardships, as required to establish a deprivation of the prisoner's due process liberty interests, where the prisoner was not deprived of all human contact or sensory stimuli. The court found that the state prison officials were entitled to qualified immunity for their conduct in placing the prisoner in disciplinary segregation, as the disciplinary segregation did not violate any clearly established right. (Menard Correctional Center, Illinois)

U.S. Appeals Court
HAIR

Knight v. Thompson, 723 F.3d 1275 (11th Cir. 2013). Native American inmates brought an action against the Alabama Department of Corrections, challenging its short-hair policy under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment for the Department and the inmates appealed. The appeals court affirmed. The appeals court held that the Department's short-hair policy for male inmates furthered compelling governmental interests in security, discipline, hygiene, and safety, as required to survive a challenge under RLUIPA by inmates who wished to wear their hair long in accordance with dictates of their Native American religion. The court noted that long hair was used to conceal weapons and contraband, it concealed inmates' fungus outbreaks, sores, cysts, and tumors, and it impeded the ability of prison staff to identify inmates. According to the court, allowing an exception for Native American inmates would not eliminate the Department's concerns, as inmates could manipulate searches of their own hair to conceal weapons, and it would do nothing to assuage the Department's concerns about hair-pulling during fights. The court held that the Department's short-hair policy, which applied to all male inmates without exception, did not discriminate on the basis of race or religion in violation of the Native American inmates' equal protection rights. (Alabama Department of Corrections)

U.S. District Court
HYGIENE ITEMS

Newell v. Kankakee County Sheriff's Department, 968 F.Supp.2d 973 (C.D.Ill. 2013). A disabled federal detainee who was housed at a county jail for two months brought an action against the county sheriff's department and county officials under § 1983 and the Americans with Disabilities Act (ADA). The defendants moved to dismiss. The district court denied the motion. The court held that the detainee's allegations that the county officials developed, supervised, and enforced policies and practices of the jail, ensured that grievances were received in the proper manner and were properly responded to, and were aware of his serious medical needs and his grievances, yet turned a blind eye to the situation, were sufficient to state a claim against the officials in their individual capacities in his civil rights action alleging he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail. The detainee allegedly had multiple disabilities that he sustained in an auto accident, including weakness and numbness in his left side and he partially dragged his left leg. He also had incontinence with urine and bowel movements and required the use of adult diapers. He was unable to stand still without assistance, which made showering and using the toilet difficult. The detainee alleged that despite his obvious disabilities and medical issues, he was assigned to a regular dorm on the top floor of the jail, and a to a top bunk. He had to hop on one leg to go up or down the stairs and needed assistance from other inmates to get into and out of his bunk. He was allegedly not given adult diapers until his third day at the jail, and even then, he was not given an adequate supply of diapers and would sometimes sit in a soiled diaper for days, and in clothes with urine and feces on them. He alleged that he was not given enough biohazard bags, and the soiled diapers and bags piled up in his cell. One day, when there was no one to assist the detainee, he fell while attempting to get out of his bunk and he sat for two hours until someone came to help him. As a result, his left leg worsened and his right leg was numb, he could not walk at all and was forced to crawl down stairs on his buttocks, and scoot along the floor and walk on his hands.

The court found that the detainee's allegations that he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail, and that the jail was not an exceptionally large facility, were sufficient to state claim against the corrections officer working at the jail in his individual capacity. According to the court, the situation described by the inmate, if true, would have been obvious to any correctional officer working in the area in which the inmate was housed. The court held that the detainee's allegations that correctional staff at the county jail acted pursuant to an official policy or custom not to perform a medical intake, investigate inmates' medical issues or complaints about problems with walking if they were ambulatory, nor provide sufficient medically-necessary hygiene items such as adult diapers to inmates, among other things, were sufficient to allege that an official policy or custom was a "moving force" in the alleged violation of his rights, as required to state official capacity claims under Monell. The court held that the detainee's allegation that he was barred from basic facilities on the basis of his disabilities while he was housed at the county jail was sufficient to allege discriminatory intent, as required to state an ADA claim against the county sheriff's department. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. Appeals Court
SHOWERS
TOILET PAPER

Stickley v. Byrd, 703 F.3d 421 (8th Cir. 2013). A pretrial detainee brought a § 1983 action against a county sheriff and county detention center personnel. The district court granted the defendants qualified immunity in part, but denied it as to the detainee's claim that the defendants' refusal to give him adequate toilet paper violated the Fourteenth Amendment. The defendants appealed. The appeals court reversed and remanded. The appeals court held that detention center personnel did not violate the detainee's Fourteenth Amendment rights by providing him with only one roll of toilet paper per week, even the detainee used his weekly allotment before the week's end each week. When this happened, the detainee had to shower to clean himself following a bowel movement. The court noted that although the detainee exhausted his toilet paper supply each week before receiving an additional roll the following week, he was not always without toilet paper, and when he did run out of toilet paper, he was able to clean himself by taking a shower. (Faulkner County Detention Center, Arkansas)

U.S. Appeals Court
HYGIENE ITEMS

Turley v. Rednour, 729 F.3d 645 (7th Cir. 2013). An Illinois prisoner serving a life sentence brought a § 1983 action against prison officials, alleging that the prisoner and other inmates classified as low-aggression offenders in the prisoner's cellhouse were subject to lockdowns for more than 50 percent of the days in a 33-month period. The district court dismissed the complaint at the screening stage for prisoner civil actions and the prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner had exhausted his administrative remedies. The court found that frequent unit-wide prison lockdowns for substantial periods of time deprived him of exercise and caused him various health issues, such as irritable bowel syndrome, severe stress, headaches, and tinnitus, stated a claim for an Eighth Amendment violation. According to the court, the prisoner sufficiently alleged prison officials' deliberate indifference to physical and psychological injuries, as required to state a claim for an Eighth Amendment violation, based on excessive prison lockdowns. The court noted that the prisoner alleged that he had filed multiple grievances about prison conditions, including a grievance specifically challenging small cells, and that the prison was the subject of numerous past lawsuits, including one specifically ordering a remedial plan for overcrowding, small cells, and lack of adequate medical care and hygiene. (Menard Correctional Center, Illinois)

U.S. Appeals Court
BEDDING
HOUSEKEEPING

Walker v. Schult, 717 F.3d 119 (2nd Cir. 2013). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a warden and various other prison officials and employees, alleging violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's allegations were sufficient to plead that he was deprived of the minimal civilized measure of life's necessities and was subjected to unreasonable health and safety risks, as required to state a § 1983 claims against prison officials for violations of the Eighth Amendment. The prisoner alleged that: (1) for approximately 28 months he was confined in a cell with five other men with inadequate space and ventilation; (2) the heat was stifling in the summer and it was freezing in the winter; (3) urine and feces splattered the floor; (4) there were insufficient cleaning supplies; (5) the mattress was too narrow for him to lie on flat; and (6) noisy and crowded conditions made sleep difficult and created a constant risk of violence. The court also found that the prisoner's allegations were sufficient to plead that prison officials knew of and disregarded excessive risks to his health and safety, as required to find that the officials were deliberately indifferent. The prisoner alleged that officials knew of overcrowding in his cell, that he spoke with some officials about the conditions, that officials were aware noise was loud and constant, that they were aware of temperature issues, that the prisoner informed officials that his bed was too narrow, that one official failed to issue cleaning supplies, and that conditions did not change despite his complaints. (Federal Correctional Institution, Ray Brook, New York)

U.S. District Court
HYGIENE ITEMS

Williams v. Erickson, 962 F.Supp.2d 1038 (N.D.Ill. 2013). A state inmate brought an action alleging that a prison nurse's refusal to open the seal on a new colostomy bag so that he could change the bag violated the Eighth Amendment and Illinois law. The defendants moved to dismiss, and the district court denied the motion in part. The court held that the inmate's allegations were sufficient to: (1) state a claim for deliberate indifference to his serious medical needs; (2) state a claim for deliberate indifference to conditions of confinement; and (3) state a claim for intentional infliction of emotional distress (IIED) under Illinois law. The court noted that the inmate was required to sit in fecal waste for four hours while medical personnel who had the means of remedying the problem deliberately ignored him. (Stateville Correctional Center, Illinois Department of Corrections)

2014

U.S. District Court
RODENTS/PESTS
TOILETS
WATER

Cano v. City of New York, 44 F.Supp.3d 324 (E.D.N.Y. 2014). Pretrial detainees brought an action against a city and police officers, alleging that inhumane conditions at a detention facility violated due process. The city and the officers moved to dismiss. The district court denied the motion, finding that the detainees alleged objectively serious conditions that deprived them of basic human needs, that the officers and the city were deliberately indifferent to conditions at the facility, and that there was punitive intent. The detainees alleged that, over a 24-hour period, they were subjected to overcrowded cells, insects, rodents, extreme temperatures, unsanitary conditions, sleep deprivation, lack of adequate food and water, lack of access to bathroom facilities, and lack of protection from the conduct of other inmates. (Brooklyn Central Booking, New York)

U.S. District Court
WATER
HYGIENE ITEMS
TOILETS

Imhoff v. Temas, 67 F.Supp.3d 700 (W.D.Pa. 2014). A pretrial detainee brought an action against employees of a county correctional facility, alleging deliberate indifference to his serious medical need, violation of his rights under the Fourteenth Amendment with regard to conditions of his confinement, and excessive force in violation of the Eighth Amendment. The employees moved to dismiss. The district court granted the motion in part and denied in part. The detainee had initially been refused admission to the jail because he displayed signs of a drug overdose and he was admitted to a local hospital. After hospital personnel determined he was stable he was admitted to the jail. At one point in his confinement, the detainee acted out and banged his cell door with a plastic stool. This resulted in the retrieval of the stool by jail officers and, while he was held down by one officer, he was kicked in the face by another officer. When he yelled for help, an officer responded by choking the detainee and then spraying him with pepper spray, and he was not permitted to shower to remove the pepper spray for thirty minutes. The court found that the detainee's allegations against the employees in their individual capacities regarding the intentional denial of medical treatment, excessive use of force, and violation of his rights under Fourteenth Amendment with regard to conditions of his confinement were sufficient to set forth a plausible claim for punitive damages. The detainee alleged that he was denied basic human needs such as drinking water, access to a toilet and toilet paper, and toiletries such as soap and a toothbrush. (Washington County Correctional Facility, Pennsylvania)

U.S. District Court
PESTS/RODENTS

Sherley v. Thompson, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden

and prison administrators for violation of his equal protection rights and his conditions of confinement. The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

2015

U.S. Appeals Court
SHOWERS

Brauner v. Coody, 793 F.3d 493 (5th Cir. 2015). A state prisoner, who was a paraplegic, brought an action against a prison medical director, assistant warden, and prison doctors, alleging deliberate indifference to his serious medical condition. The district court denied the parties' cross-motions for summary judgment. The defendants appealed. The appeals court reversed, finding that: (1) prison doctors were not deliberately indifferent to the prisoner's serious medical needs by failing to provide him with adequate pain management; (2) officials were not deliberately indifferent by subjecting the prisoner to unsanitary showers; and (3) doctors did not fail to provide adequate training and supervision regarding proper wound care, even if the prisoner's wound care by nurses and other subordinates was occasionally sporadic, where the doctors were active in managing it, and they regularly changed the prescribed frequency of the bandage changes based on the changing condition of the prisoner's wounds, and also prescribed antibiotic therapy regimens to assist with healing. The court noted that it was undisputed that the showers were cleaned twice per day with bleach, that the prisoner was given a disinfectant spray bottle for his personal use, and that the prisoner was permitted to enter the showers before the other prisoners so that he could clean himself without interference, and there was no showing that the prisoner was ever prohibited from using the showers. (R.E. Barrow Treatment Center, Louisiana)

U.S. District Court
RODENTS/PESTS
BEDDING

Cano v. City of New York, 119 F.Supp.3d 65 (E.D.N.Y. 2015). Pretrial detainees temporarily housed in a booking facility brought an action against a city and city officials under § 1983 alleging deliberate indifference to detainee health in violation of the Due Process Clause of the Fourteenth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) temporarily subjecting detainees to overcrowded jail cells was not deliberate indifference; (2) failure to provide sleeping equipment, such as beds, cots, pillows, blankets, or bedding was not deliberate indifference; (3) availability of only one toilet for 24 hours in each overcrowded holding cell was not deliberate indifference; (4) alleged failure to provide food and water was not deliberate indifference; (5) police officers were not subjectively aware of a risk to the detainees; (6) police officers did not act with punitive intent; (7) placement of pretrial detainees in jail cells with alleged rodent and insect infestations was not deliberate indifference; (8) placement of pretrial detainees in jail cells with alleged violent offenders that had limited police supervision, allegedly leading to fights, thefts, and bullying, was not deliberate indifference to detainee health; and (9) alleged exposure of pretrial detainees to extreme hot or cold temperature conditions in unventilated jail cells was not deliberate indifference to detainee health that would violate the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainees were not kept in the cells for more than 24 hours, and were not harmed by the alleged overcrowding. (Brooklyn Central Booking, City of New York Police Department, New York)

U.S. District Court
HYGIENE ITEMS
CLOTHING
SHOWERS
WATER

Fant v. City of Ferguson, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
CLOTHING
SHOWERS

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on

one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
RODENTS/PESTS

Smith v. Dart, 803 F.3d 304 (7th Cir. 2015). A pretrial detainee brought action under § 1983 against a county alleging deliberate indifference to his health in violation of the right to the provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for his job in the jail's laundry room. The district court dismissed the case and the detainee appealed. The court held that the detainee failed to allege harm stemming from the presence of spider nests, cockroaches, and mice, and thus failed to state a claim under § 1983 for deliberate indifference to his health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainee did not allege that pests were present in his cell, or that pests had ever come into contact with his person or his property, or that he'd been bitten or stung or otherwise suffered physical or psychological harm, or that his property had been damaged. (Cook County Jail, Illinois)

U.S. District Court
SHOWERS
HYGIENE ITEMS
CLOTHING

Smith v. Eovaldi, 112 F.Supp.3d 779 (S.D. Ill. 2015). A state inmate, proceeding in forma pauperis, brought a § 1983 action against several prison officers, alleging use of excessive force and exposure to inhumane conditions in his cell. The prisoner alleged that after he had a "negative outburst" and was "maced" by a lieutenant and removed from his cell by a corrections officer, he was taken to an infirmary bullpen, where he was forced to lie on the floor. While he was on the floor, the prisoner alleged that officers kicked and punched him for ten minutes, causing him to defecate upon himself. He alleged that after the incident, he was stripped of his prison clothes and "inadequately seen" by "medical" personnel. At the screening stage of the case, the district court dismissed the complaint in part against some defendants, but declined to dismiss with regard to the others. The court held that the inmate sufficiently alleged § 1983 claims against several prison officers for use of excessive force by alleging that the officers engaged in prolonged attacks against him and that one officer subsequently attacked him again.

The court allowed the prisoner's claims against several prison officers regarding conditions of his confinement to proceed. The prisoner alleged that two officers did not feed him for several days after the alleged attack against him, that two other officers did not allow the inmate to shower or otherwise clean off fecal matter for several months, and that two other officers denied him hygiene products and warm clothing during winter months. (Menard Correctional Center, Illinois)

SECTION 24: IMMUNITY

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

SEE ALSO: CHAPTER 27, LIABILITY

1963

U.S. Supreme Court
FED. TORT CLAIMS
ACT
SOVEREIGN
IMMUNITY

U.S. v. Muniz, 374 U.S. 150 (1963). Muniz and another federal prisoner brought separate actions under the Federal Tort Claims Act against the United States Government for injuries received while in federal prisons. The U.S. District Court for the Southern District of New York dismissed the cases on the grounds that such suits were not permitted by the act. The Second Circuit Court of Appeals reversed, and the U.S. Supreme Court granted certiorari. (Affirmed.)

HELD: In holding that suits under the Federal Tort Claims Act could be maintained against the U.S. by federal prisoners to receive compensation for personal injuries sustained during confinement in prison by reason of negligence of government employees, the court stated:

Considering the plain import of the statutory language, the number of prisoners' claims among the individual applications for private bills leveling to the passage of the Federal Tort Claims Act, the frequent mention of a prisoner claims exception in the proposed bills, and the reference, among others, to New York law, which permitted recovery by prisoners, we believe it is clear that Congress intended to waive sovereign immunity in cases arising from prisoners' claims. 374 U.S. at 158.

NOTE: The court rejected the state's arguments that allowing FTCA liability would:

- Create problems of uniform state-to-state application;
- Lend to possible abuses, such as harassment suits;
- Hamper prison security and discipline.

(United States Penitentiary, Terre Haute, Indiana)

1967

U.S. Supreme Court
42 U.S.C.A.
Section 1983
GOOD FAITH

Pierson v. Ray, 386 U.S. 547 (1967). Pierson, together with fourteen other members of a group of white and negro clergymen, was arrested by Jackson, Mississippi policemen while attempting to use a segregated interstate bus terminal waiting room in Jackson. The group was charged with breaking the peace in violation of a Mississippi statute. All fifteen were tried before a municipal police justice, found guilty, sentenced to four months in jail, and fined \$200 each. After one of the group obtained a trial de novo on appeal, and a subsequent directed verdict, charges against the others were dropped. The group then initiated this action under 42 U.S.C. Section 1983 for deprivation of civil rights and at common law for false arrest and imprisonment.

The jury found for the police in the district court. On appeal, the Fifth Circuit held that the municipal police justice's acts were immune under both Section 1983 and state common law; that the police had immunity under state common law for false arrest if they had probable cause to believe the statute they were enforcing was constitutional, but that by virtue of Monroe v. Pape, they had no such immunity under Section 1983 where the state statute was later declared unconstitutional.

HELD: The well established common-law principal that judges are immune from liability for damages for acts committed within their judicial jurisdiction was not abolished by Section 1983. 386 U.S. at 554.

HELD: "[T]he defense of good faith and probable cause....available to the [police] officers in the common-law action for false arrest and imprisonment, is also available to them in the action under Section 1983." 386 U.S. at 557. (Jackson, Mississippi)

1973

U.S. Supreme Court
42 U.S.C.A.
Section 1983
MUNICIPAL
IMMUNITY

Moore v. County of Alameda, 411 U.S. 693 (1973), reh'g denied, 412 U.S. 963 (1973). Moore and Ranelle filed separate actions in the district court for the northern district of California seeking to recover actual and punitive damages for injuries allegedly suffered by them as a result of the wrongful discharge of a shotgun by a deputy sheriff in quieting a civil disturbance. Four deputy sheriffs, the sheriff, and the county were named as defendants. Federal causes of action under the Civil Rights Act of 1871, 42 U.S.C. Sections 1983 and 1988 were alleged against the county as well as pendent state claims under the state's tort claims statute. Both federal and state cases of actions were grounded on the theory that the county was vicariously liable under state law for the deputy sheriff's acts. Federal jurisdiction was alleged under 28 U.S.C. Section 1343 and on diversity of citizenship grounds. The county moved to dismiss each action contending that first, it was not a suable "person" under Monroe v. Pape, 365 U.S. 167 (1961); second, absent a claim against it existing on an independent basis of federal jurisdiction, application of the pendent jurisdiction doctrine was inappropriate as to the state tort claims; and third, the county was not a "citizen" for purposes of diversity of citizenship jurisdiction. Motions to dismiss were granted by the district court, the Ninth Circuit Court of Appeals affirmed, and certiorari from the Supreme Court was sought.

ISSUE AND HOLDING: Whether a federal course of action lies against a municipality under 42 U.S.C. Sections 1983 & 1988 for the actions of its officers which violate an individual's federal civil rights where the municipality is subject to such liability under state law. The legislative history of Section 1988 clearly indicates that Congress did not intend to create an independent federal cause of action for the violation of federal civil rights. To apply Section 1983 by imposing vicarious liability upon the county would conflict with the holding of Monroe v. Pape, 365 U.S. 167 (1961) and Congress' intent to exclude a state's political subdivision from Section 1983 civil liability. 411 U.S. at 702, 706, 710.

HELD: "We find nothing in the legislative history discussed in Monroe v. Pape, 365 U.S. 167] or in the language actually used by Congress to suggest that the generic word "person" in Section 1983 was intended to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them...[Municipalities] are outside of its ambit for purposes of equitable relief as well as damages." 412 U.S. at 513.

Justice Douglas capsulized the rationale of the MONROE V. PAPE decision (which he authored with regard to municipal immunity under Section 1983) as follows: The holding in MONROE V. PAPE that municipalities are not subject to suits for damages under Section 1983 was based largely on Congress' rejection of the Sherman Amendment which would have provided compensation for individuals from the county, city, or parish for any damages caused by riots, etc. Two theories were expressed in the debates for rejecting the amendment. The first was the notion that civil liability for damages might destroy or paralyze local governments. Also it was thought unjust that local governments (and indirectly the citizenry at large) should be subject to damages where they bore no responsibility....

There was another strain, however. Congressman Brooks viewed the amendment as raising the old struggle between the Federalists and the Democrats. 412 U.S. at 417-518. (County of Alameda Sheriff's Department)

1974

U.S. Supreme Court
42 U.S.C.A.
Section 1983
QUALIFIED
IMMUNITY
GOOD FAITH

Scheur v. Rhodes, 416 U.S. 232 (1974). Personal representatives of the estates of students who were killed on the Kent State University, Ohio campus in 1970 brought damages action under 42 U.S.C. Section 1983 against the governor, adjutant general of the Ohio National Guard, various guard officers and enlisted members, and the university president, claiming these officials, acting under color of state law caused the death to the students unnecessarily and illegally. This decision is important in a corrections law context due to the decision in Procunier v. Navarette, 434 U.S. 555 (1978). In that decision the Supreme Court ruled that the state officials and governor could rely only on the qualified immunity described in Scheur.

HELD: "[I]n varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liabilities are sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, applied with good faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct." 416 U.S. at 247-248. (Kent State University, Ohio)

1979

U.S. Appeals Court
GOOD FAITH

Raffone v. Robinson, 607 F.2d 1058 (2nd Cir. 1979). In November, 1977, a black inmate was found stabbed in a laundry cart near the gymnasium at the Connecticut Correctional Institution at Somers. The plaintiff in this case, Salvatore Raffone, and five other white inmates were removed from general prison quarters and placed in segregation. One of the inmates was told that the six were being held pending the investigation of the black inmate's death. Eight days after being placed in segregation, Raffone was given a hearing with no written notice. He was not told the purpose of the hearing nor the fact that he could call witnesses on his behalf. At the hearing, he was told only that he was being held pending the outcome of the investigation into the slaying of the black inmate.

Because the officials expected Raffone's stay in the segregation to be lengthy, he was allowed some of the privileges available to prisoners in the general population, such as recreation and the use of some of his personal belongings. Two of the inmates placed in segregation were returned to the general population shortly after being placed there. Raffone and the three remaining inmates wrote a letter to a district court judge asking to be released. Hearings were held, and the officials explained that Raffone and the other inmates were being held for several reasons. First, they had been told by the state police, who were investigating the murder, that Raffone and the others were prime suspects. Second, they feared that because of the racial overtones of the murder, Raffone and the other inmates might be hurt once it was learned by inmates in the general population that the four inmates in segregation were prime suspects.

The officials testified at length as to objective observations they had made which implied that racial unrest had increased in the prison population. The district judge ruled that Raffone's rights had been violated. However, since the violation was not intentional and since his rights had not been clearly established, there would be no finding of liability on the part of the officials. Raffone appealed the court's order, but the U.S. Second Circuit Court of Appeals affirmed. The appellate court dismissed the case law and noted that there was some confusion in the area because of rather close cases decided by the U.S. Supreme Court. The court stated: "Thus, at the time Raffone was removed to administrative segregation, the Supreme Court case law indicated that transfers did not necessarily require procedural due process even if they substantially deprived a prisoner of privileges."

The court also commented that since the officials had been able to demonstrate their good faith and did not act maliciously in segregating Raffone, they would be immune from an award of money damages. (Correctional Institution, Somers, Connecticut)

1980

U.S. Supreme Court
42 U.S.C.A.
Section 1983
GOOD FAITH
SOVEREIGN
IMMUNITY

Owen v. City of Independence, Mo., 100 S.Ct. 1398 (1980), reh'g denied, 100 S.Ct. 2979. Following an investigation of alleged mismanagement of the police department's property room, and other irregularities in the department, the Independence, Mo. City Council moved that reports of the investigation be turned over to the news media and to the prosecutor for presentation to a grand jury. Additionally, the city manager was instructed to take appropriate action against persons involved. Accordingly, under powers granted him by the city's charter, the city manager dismissed Owen, the chief of police. Owen was given no reason for his dismissal, only written notice that his employment as chief of police was terminated.

Owen brought suit in the U.S. District Court for the Western District of Missouri under 42 U.S.C. Section 1983 against the city, the city manager, and the City Council in their official capacities. Alleging that his dismissal without notice of reasons and without a hearing violated his substantive and procedural due process rights, Owen sought declaratory and injunctive relief. The district court entered judgment for the defendants. The Eighth Circuit Court of Appeals affirmed, holding that although the defendants had violated Owen's fourteenth amendment rights, all the defendants were entitled to qualified immunity from liability based on the good faith of the city officials. Owen petitioned the Supreme Court for a writ of certiorari, and the Court reversed the lower court decision.

HELD: "We hold...that the municipality may not assert the good faith of the officers or agents as a defense to liability under Section 1983." 100 S.Ct. at 1409.

RATIONALE: A. The terms of Section 1983 create a species of tort liability that on its face admits of no immunities.... No mention is made of any privileges, immunities, or defenses that may be asserted. The act imposes liability upon every person and Monell held that these words were intended to encompass municipal corporations as well as natural persons. This expansive sweep of Section 1983's language is confirmed by its legislative history. 100 S.Ct. at 1407-1408.

B. In discussing earlier decisions where the personal liability of various types of government officials was considered (such as the qualified immunity for prison officials and officers), Procunier v. Navarette, 434 U.S. 555 (1978), the Court stated: "Where the immunity claimed by the defendant was well established as common law at the time

Section 1983 was enacted and where its rationale was compatible with the purposes of the Civil Rights Act, we have construed the statute to incorporate that immunity. But there is not tradition of immunity for municipal corporations, and neither history nor public policy support a construction of Section 1983 that would justify immunity accorded the city... 100 S.Ct. at 1409.

C. The principle of sovereign immunity from which a municipality's immunity for governmental functions is derived cannot serve as the basis for a good-faith immunity, as the city claims. Sovereign immunity insulates a municipality from unconsented suits altogether. The presence or absence of good faith is immaterial. Also the municipality's governmental immunity is abrogated by the enactment of a statute such as Section 1983 making it amenable to suit. 100 S.Ct. at 1413-1414. Also, the common-law immunity for discretionary governmental functions, which served only the purpose of preventing courts from substituting their own judgment on matters within the lawful discretion of a municipality, cannot serve as the basis for a Section 1983 good faith immunity, since a municipality has no discretion to violate the federal Constitution. 100 S.Ct. at 1415.

D. Strong public policy considerations are present. The purpose of Section 1983 is to provide protection to people wronged by abuse of governmental authority. In view of the qualified immunity enjoyed by most government officials, many victims of municipal wrongdoings would be left without a remedy if the municipality was allowed to assert good faith as a defense. Concerns which may have justified qualified immunity for government officials [such as the injustice of subjecting an official to liability, particularly in the absence of bad faith, or the danger that such liability would deter the official's willingness to execute his office effectively] are less compelling when the liability of a municipality is at issue: "[K]nowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of the intended actions to err on the side of protecting citizens' constitutional rights." 100 S.Ct. at 1416.

In summary the Court viewed its decision, together with prior decisions in the area, as properly allocating the costs of official misconduct: "...among the three principals in the scenario of the Section 1983 cause of action: the victim of the constitutional deprivation; the officer whose conduct caused the injury; and the public, as represented by the municipal entity. The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury. The offending official, so long as he conducts himself in good faith, may go about his business secure in the knowledge that a qualified immunity will protect him from personal liability for damages that are more appropriately chargeable to the populace as a whole. And the public will be forced to bear only the costs of injury inflicted by the 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" (quoting Monell v. New York City Dept. of Social Service, 436 U.S. at 694). (City of Independence, Missouri)

U.S. Appeals Court
GOOD FAITH

Trapnell v. Riggsby, 622 F.2d 290 (7th Cir. 1980). Where the actions of the correctional officials are in good faith, and the officials lack knowledge that they are erroneous, the officials are immune. (Federal Prison, Marion, Illinois)

1981

U.S. District Court

Vance v. Rice, 524 F.Supp. 1297 (S.D. Iowa 1981). The power to render a material witness incompetent should not be placed in the hands of a defendant in the name of a constitutional right to marry. The defendant had been charged with seven criminal charges growing out of robbery of a drugstore during which persons were bound and shot at close range, although none were killed. The state's interest in having all relevant evidence presented to the fact finder satisfied the "compelling state interest" requirement. The actions of state officials in prohibiting their marriage until after the witness had given her testimony at the trial served to further the legitimate and compelling interest of the state. Furthermore, no less restrictive alternative than the methods sought to be employed by officials was available. (Polk County, Iowa)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Wolfel v. Sanborn, 666 F.2d 1005 (1981), cert. denied, 459 U.S. 1115. In an action for damages under the civil rights laws, state officials have the burden of proving that they are entitled to qualified immunity because they acted in good faith. (Ohio Adult Parole Authority)

1982

U.S. District Court
42 U.S.C.A.
Section 1983

DiGiovanni v. City of Philadelphia, 531 F.Supp. 141 (E.D. Penn. 1982). A municipality's immunity from any claim for punitive damages under 42 U.S.C.A. Section 1983 does not necessarily apply to officials and employees of municipalities. Punitive damages may be awarded against municipal officials and employees in order to punish gross violations of constitutional rights. (Philadelphia City Jail, Pennsylvania)

U.S. Appeals Court

Kincaid v. Rusk, 670 F.2d 737 (7th Cir. 1982). A jail rule limiting pretrial detainees to nonpornographic, soft bound, nonpictorial reading material, such as Reader's Digest and the Bible, violates the first amendment rights of the detainees. The rule could not be justified on the theory that newspapers would be more likely to be used to start toilet fires or that hard bound books could cause injury by being thrown. Furthermore, the sheriff did not enjoy immunity with respect to suit for damages because of violation of the first amendment rights. Nominal damages of one dollar were awarded. (Tippecanoe County Jail, Indiana)

State Appeals Court
GOVERNMENTAL
IMMUNITY

Layton v. Quinn, 328 N.W.2d 95 (Ct. App. Mich. 1982). Judgment for county is reversed in light of failure to comply with court orders. The plaintiff, administratrix of the estate of the decedent inmate who committed suicide in the Wayne County Jail, alleged wrongful death and sought to recover damages. The inmate attempted suicide on the first day in jail, threatened to take his life three days later and was transferred to a disciplinary cell which was the farthest from the guard station. After two days in the cell he committed suicide. Prior to his incarceration, the Wayne County Circuit Court had issued orders to county officials concerning the admission, custody, care and treatment of inmates in the jail. The trial court granted accelerated judgment for the county defendants who claimed governmental immunity; this was reversed by the appeals court, citing the prior court orders which were so explicit that failing to comply must be deemed outside the protection of governmental immunity.

The original complaint alleged that the wrongful death was the result of negligence in the defendant's hiring, training and supervision of jail personnel. (Wayne County Jail, Michigan)

U.S. District Court
42 U.S.C.A.
Section 1983

Peterson v. Davis, 551 F.Supp. 137 (D. Md. 1982), aff'd, 729 F.2d 1453 (4th Cir. 1984). Use of tear gas is not excessive force. The United States District Court held that the use of tear gas to quell a disturbance in this instance did not give rise to a Section 1983 action, nor did the confining of inmates in an old recreation area following the use of tear gas. Also, the court ruled that even if the use of tear gas was found unconstitutional, the warden and officers would have been immune from liability. (Maryland House of Correction)

U.S. District Court
GOOD FAITH

Strachan v. Ashe, 548 F.Supp. 1193 (D. Mass. 1982). Isolation unit conditions are held unconstitutional. Alleging that conditions of an isolation unit in a county correctional facility in Massachusetts were unconstitutional, the plaintiff brought this Section 1983 action.

Although the plaintiff contended that the procedural aspects of the disciplinary proceedings which placed him in isolation, as well as the conditions of isolation were unconstitutional, the court focused on the conditions of the isolation cell. The cell was ten feet by ten feet with no toilet or running water. The plaintiff was permitted to leave his cell only fifteen minutes daily to exercise and to wash with cold water. His only bedding was a mattress on the floor. He was allowed only one blanket, a sheet and pillow. Food served to him was cold.

In discussing the lack of plumbing facilities, the court found that conditions of the isolation cell violated minimum state standards, which did not establish a constitutional violation per se, but lack of adequate plumbing facilities has previously been held to a violation of the eighth amendment.

The court held that because the defendant supervisors had actual notice of the prison conditions, the administrative negligence of not acting on those conditions rose to the level of deliberate indifference in this case. The defendants argued that they were entitled to "good faith immunity," that they could not have been expected to know that they were violating the constitutional rights of the plaintiff. The court rejected this argument, finding that the inmate clearly had a constitutional right to adequate and hygienic means of disposing of his bodily waste. (Hampden County House of Corrections, Massachusetts)

U.S. Appeals Court
GOOD FAITH
QUALIFIED
IMMUNITY

Williams v. Bennett, 689 F.2d 1370 (11th Cir. 1982), cert. denied, 104 S.Ct. 335 (1982). Supreme Court will not review a decision denying prison officials a "good faith" defense. The United States Supreme Court has declined to hear a case which established that a prisoner who was injured in an attack could sue prison officials in their personal capacity. State prison officials were told that they might personally be liable for damages, under the eighth amendment, by the 11th Circuit Court of Appeals. When an inmate of Holman Prison in Alabama was stabbed by another prisoner and was rendered a permanent quadriplegic, he brought suit alleging violation of his constitutional rights under the eighth amendment. (Holman Prison, Alabama)

U.S. District Court
GOOD FAITH
QUALIFIED
IMMUNITY

Williams v. Heard, 533 F.Supp. 1153 (S.D. Tex. 1982). The sheriff is liable for the failure of his agents to release a prisoner after he was no billed by the grand jury. A grand jury "no bill" constitutes a direction to the jailer that demands that a prisoner be released when the grand jury fails to find a bill of indictment for the offense

charged. The failure to release the prisoner amounted to a deprivation of the prisoner's liberty without due process. The sheriff was not immune from liability on the basis of good faith since his actions were not reasonable. (Harris County Jail, Texas)

U.S. Appeals Court
GOOD FAITH
QUALIFIED
IMMUNITY

Williams v. Treen, 671 F.2d 892 (1982), cert. denied, 103 S.Ct. 762 (1982). Insofar as the conditions of confinement at a Louisiana prison contravened clearly established state law, the state prison officials' belief in the lawfulness of those conditions was per se unreasonable. Thus, they could not claim an immunity based on reasonable good faith. If the officials knowingly deprived a prisoner of needed medication, they violated the constitutional prohibition against cruel and inhuman punishment and would not be entitled to qualified immunity. (State Penitentiary, Angola, Louisiana)

1983

U.S. District Court
GOOD FAITH
QUALIFIED
IMMUNITY

Marchant v. City of Little Rock, Ark., 557 F.Supp. 475 (E.D. Ark. 1983), aff'd, 741 F.2d 201 (8th Cir. 1984). Officials are not liable under Section 1983 for failing to give a pretrial detainee prescribed medicine. A federal district court in Arkansas found no liability on the part of the city or jail officials concerning a claim of improper medical care. The court noted that although the jail matrons may have been negligent in not giving the prisoner her prescribed medicine on a regular basis, there could be no recovery for damages since the matrons defense of good faith entitled them to qualified immunity in this Section 1983 action. Recovery under state laws was not prohibited because the matron had not intentionally denied the detainee any constitutional rights. Because no policy had been promulgated that violated the prisoner's constitutional rights, the city, the chief of police, and the jail administrator could not be liable. (Little Rock City Jail, Arkansas)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983). States are not immune from age discrimination suits. This action was filed by an applicant for a position with the Puerto Rico Fire Service, who had successfully passed all tests and had qualified for the position. The fire service refused to hire him because of his age. The Plaintiff filed the action under the Age Discrimination in Employment Act seeking back wages, injunctive relief and liquidated damages. The case was dismissed on the trial level on a motion by the defendants claiming that the eleventh amendment precludes suits against state governments. The First Circuit Court of Appeals reversed, holding that the eleventh amendment does not provide immunity from age discrimination suits and remanded the matter for further proceedings. (Puerto Rico Fire Service)

State Appeals Court
GOVERNMENTAL
IMMUNITY

Young v. City of Ann Arbor, 336 N.W.2d 24 (Mich. App. 1983). Governmental immunity is granted to police chief for arrestee's suicide in lockup. A Michigan Court of Appeals has ruled that a police chief be granted immunity for the death of an arrestee who hung himself with a belt in his lockup. The court decided that immunity should be granted when the act falls within the scope of employment and granted immunity based on this rationale. A dissenting judge argued that a more stringent test of "ministerial discretion" be applied for acts committed within the scope of employment. (Ann Arbor Police Dept., Michigan)

1984

U.S. Appeals Court
42 U.S.C.A.
Section 1983
QUALIFIED
IMMUNITY

Deary v. Three Un-Named Police Officers, 746 F.2d 185 (3rd Cir. 1984). Appeals court remands case for jury trial to determine if probable cause existed for arrest and subsequent detention. The United States Court of Appeals for the Third Circuit has reversed part of a lower court decision, remanding the case to the lower court for further proceedings. The United States District Court for the District of the Virgin Islands had granted summary judgment for the defendants, and the plaintiff appealed.

The plaintiff had been arrested, detained and charged with bank robbery. The arrest was made by three police officers on the basis of a newspaper photograph of the bank robber. Charges were eventually dropped, and the plaintiff sued the three officers, the Department of Public Safety, the F.B.I. and the government of the Virgin Islands.

The court of appeals affirmed the lower court decision which granted summary judgment in favor of all of the defendants except the three officers. The court found that "a genuine issue of material fact existed as to whether arresting officers had probable cause, precluding summary judgment on ground of qualified immunity."

The court noted that even if the police officers lacked probable cause to arrest and detain the plaintiff, they could still avoid liability under 42 U.S.C.A. Section 1983 if they could demonstrate their good faith in so doing See Black v. Stevens, 662 F.2d 181 (3rd Cir. 1981).

The court of appeals noted that remanding the case will address both Section 1983 assertions and common law causes of action. (Virgin Islands)

U.S. District Court
GOOD FAITH

Kathriner v. City of Overland, Missouri, 602 F.Supp. 124 (E.D. Mo. 1984). The U.S. District Court held that strip searching a pretrial detainee without reason to believe she possessed contraband or weapons violated her constitutional rights. The plaintiff challenged the blanket policy of strip searching all prisoners, regardless of their length of detention. Corrections officials who conducted the search were granted good faith immunity because they adopted the strip search policy when Bell v. Wolfish was decided and had not been put on notice that their actions were unconstitutional. The court held the city liable for their violations. (Overland City Lockup, Missouri)

U.S. Appeals Court
QUALIFIED
IMMUNITY

O'Hagan v. Soto, 725 F.2d 878 (2d Cir. 1984). Uncertainty about when right to counsel attaches causes federal appeals court to grant qualified immunity. A law enforcement officer denied an arrestee a phone call during questioning at a police station, prompting a suit alleging denial of access to counsel.

Although the appeals court found that the right to counsel attached at the time the arrestee was taken to the station for questioning, the officer was granted qualified immunity because his conduct did not violate "clearly established law."

The court noted that conflicting court decisions clouded the question of when the right to counsel begins. (Haverstraw Police Department, New York)

1985

U.S. Appeals Court
QUALIFIED
IMMUNITY

Blackburn v. Snow, 771 F.2d 556 (1985). A woman was awarded \$177,040 for violations of fourth amendment rights when repeatedly subjected to strip searches when visiting her brother. The sheriff imposed a rule requiring all visitors to submit to body cavity strip-searches, without any suspicion of carrying contraband or anything else. Merely because they were visiting, they were strip searched. The court ruled that the sheriff was not immune from damages, and that the county was liable for the policy as well. The plaintiff's returning to the prison for visits on future occasions where she was again strip searched did not imply consent to waive her constitutional rights, added the court. (Plymouth County Jail, Massachusetts)

U.S. District Court
QUALIFIED
IMMUNITY

John Does 1-100 v. Ninneman, 612 F.Supp. 1069 (D.C. Minn. 1985) and John Does 1 100 v. Boyd, Civil 2-84-378, (D.C. Minn. 1985). Strip searches of detainees arrested for minor offenses barred; individual defendants, but not county, given qualified immunity. Following the decisions of several circuits, the federal district court found that the county's practice of strip searching detainees arrested for minor offenses unrelated to drugs, weapons or predatory conduct to be unconstitutional under the fourth amendment. The county was held liable for the practice, but individual defendants were granted immunity because the law was not clearly established in this area. (Chicago County, Minnesota)

State Supreme Court
SOVEREIGN
IMMUNITY

Horne v. Beason, 331 S.E.2d 342 (S.C. 1985). City not liable for suicide of seventeen-year-old prisoner. After his arrest for charges of driving with a suspended license and operating an uninsured motor vehicle, a seventeen-year-old arrestee was admitted to detention in a city lockup. Although he was wearing only a bathing suit and a bathrobe, staff did not identify him as a potential suicide risk. About thirty-five minutes after admission to his cell he was found dead, hanging from the overhead bars. The judge determined that the city should not be held liable for the suicide, stating:
...Jailors, like others, are expected to perform their duties, avoid negligence and foresee that certain acts might cause injury to others. A jailor, however, is not expected to be a fortuneteller or psychologist or psychiatrist. To require a jailor to foresee that a person incarcerated under circumstances described hereinabove would commit suicide would require of him capabilities, characteristics and genius unknown to the ordinary, reasonably prudent jailor.

The judge also noted that he could not hold the city liable because it was immune from the suit under a doctrine of sovereign immunity established in McCall v. Batson, 329 S.E.2d 741 (S.C. 1985) which held that governmental entities which did not have liability insurance (such as this city) are immune from suit until July, 1986. (Greer City Jail, South Carolina)

1986

U.S. Supreme Court
JUDICIAL IMMUNITY
QUALIFIED
IMMUNITY

Cleavinger v. Saxner, 106 S.Ct. 496 (1986). Supreme Court denies absolute judicial immunity to members of disciplinary hearing board and rules that members are entitled to only qualified immunity. The two plaintiffs, inmates at the Federal Correctional Institution at Terre Haute, Indiana, were charged with violating facility rules by encouraging a work stoppage. Both were found guilty of the charges and subsequently appealed. In federal district court, the plaintiffs brought suit against the disciplinary board members, the warden and the facility's administrative supervisor, alleging violation of their rights under the first, fourth, fifth, sixth and eighth amendments.

The district court initially dismissed the complaint, finding the defendants were entitled to absolute judicial immunity. Two years later, the court reconsidered the case in light of the appeals court ruling in Mary and Crystal v. Ramsden, 635 F.2d 590 (7th Cir. 1980). Following a jury trial, hearing board members were found to have violated the prisoners' fifth amendment due process rights. Each member was subjected to a total liability of \$3,000 compensatory damages (\$1,500 for each prisoner). On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed the jury decision. The case was reviewed by the U.S. Supreme Court because of the importance of the issue and because Seventh Circuit rulings conflicted with the en banc decision of the Fourth Circuit in Ward v. Johnson, 690 F.2d 1096 (1982).

The Supreme Court concluded that hearing officers were not similar enough to judges to enjoy absolute immunity for their actions and are therefore protected by only the same qualified immunity which is offered to any government official sued under 42 U.S.C.A. Section 1983. Thus, when a member of a disciplinary board makes a mistake which violates a prisoner's constitutional rights, he/she may be liable for damages. (Federal Correctional Institution, Terre Haute, Indiana)

U.S. District Court
QUALIFIED
IMMUNITY

Flood v. Lane, 638 F.Supp. 677 (N.D. Ill. 1986). A juvenile parolee brought action against the director and the deputy director of the Illinois Department of Corrections, the superintendents of youth centers, the chairman of the Illinois Prisoner Review Board, the director and deputy administrator and the supervisor of the Illinois Department of Children and Family Services for alleged violations of constitutional rights that stemmed from the custody in juvenile correction facilities beyond the parole eligibility date. The district court held that: (1) superintendents of youth centers, and the deputy administrator and supervisor of Illinois Department of Children and Family Services were entitled to qualified immunity on equal protection claims but were not entitled to qualified immunity on the juvenile parolee's claim for denial of a due process right to a hearing before denial of the parole; (2) Director of Illinois Department of Children and Family Services were entitled to immunity from constitutional claims; and (3) the juvenile parolee whose parole could have been continued based on inadequate finances or inability of officials to find a place for parolee was entitled to only nominal damages on a procedural due process claim. (Department of Corrections, Illinois)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Hernandez v. Estelle, 788 F.2d 1154 (5th Cir. 1986) Prison officials properly suppressed distribution of publication and were entitled to qualified immunity even though they did not accurately follow their own procedures.

A prison inmate brought a federal civil rights action alleging that prison officials violated his free speech rights by suppressing distribution of a revolutionary publication within the prison system. The United States District Court for the Southern District of Texas dismissed the suit, and the inmate appealed. The court of appeals held that: (1) censorship was justified to avoid a perceived threat to prison security, and (2) officials were entitled to qualified immunity. The court ruled that the decision of Texas Department of Corrections not to distribute issue of bilingual revolutionary publication to subscribers within the prison system did not violate the subscribers' first amendment rights where the decision was supported by proven objective factors relating to prison security.

The court also held that the state prison officials did not act outside the scope of their qualified immunity from inmate's federal civil rights action for allegedly violating his free speech rights by failing to clip those portions of the publication which officials found threatening to prison security and allowing remainder to be distributed. The state prison officials' violation of prison rules requiring notification that a publication is being withheld from inmate to be given to inmates within forty-eight hours did not entitle inmates to relief under federal civil rights law; mere failure to give timely notice but with complete and adequate due process procedures after notice actually was given did not violate the Constitution. (Texas Department of Corrections)

U.S. District Court
QUALIFIED
IMMUNITY

Mabry v. County of Kalamazoo, 626 F.Supp. 912 (W.D. Mich. 1986). An individual detained for over sixty hours over a holiday weekend without a probable cause determination brought an action following his release without charges having been filed. The district court held that: (1) the detention violated the individual's right to probable cause determination after completion of administrative steps incident to arrest; (2) issues of material fact precluded summary judgment against county or arresting officers; and (3) the arresting officer was not entitled to qualified immunity.

The onus is on the arresting officers to ensure that the suspect receives prompt determination of probable cause following a warrantless arrest as the existence of probable cause justifies only arrest and a brief period of detention to take administrative steps incident to the arrest. The availability of a judicial officer to make a determination of probable cause may be a factor in determining whether officers took a "reasonable" amount of time in completing requisite administrative steps before securing a probable cause determination following a warrantless arrest, particularly in a small town/rural area. However, there is an outside limit to the length of time a suspect can be held without a probable cause determination.

The arresting officer lacked the benefit of qualified immunity for any constitutional violations in a sixty-hour detention of an individual without a probable cause determination following a warrantless arrest, where the conduct violated clearly established law, and the officer had not shown that he neither knew nor should have known of relevant legal standard. (County of Kalamazoo, Michigan)

U.S. District Court
QUALIFIED
IMMUNITY

McCullough v. Cady, 640 F.Supp. 1012 (E.D. Mich. 1986). An inmate brought a civil rights action against a prison guard arising from an incident in which the guard shot the inmate. The prison guard and other defendants moved for judgment notwithstanding the verdict after the jury returned verdict for the inmate. The district court held that: (1) there was sufficient evidence for the jury to reasonably infer that the prison guard deliberately and wantonly inflicted pain upon the inmate in violation of the eighth amendment; (2) the prison guard did not enjoy qualified immunity from liability; and (3) the inmate was entitled to recover attorney's fees and costs.

An overwhelming weight of evidence was that the prison guard intentionally shot the inmate who did not pose a threat to the safety of anyone. Therefore, the prison guard was not entitled to qualified immunity from liability in the inmate's civil rights action. (State Prison for Southern Michigan at Jackson, Michigan)

U.S. District Court
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY

McDonald v. Doe, 650 F.Supp. 858 (S.D.N.Y. 1986). A prison inmate brought an action against an assistant district attorney and others in regard to an alleged beating of the inmate in the courthouse. On the prosecutor's motion for summary judgment, the district court held that: (1) the prosecutor had absolute immunity in regard to bringing of charges and alleged withholding of evidence, and (2) the prosecutor enjoyed only qualified immunity in regard to a claim that the prosecutor ordered the inmate's beating.

A prosecutor's powers in bringing and reducing charges are immune even from judicial oversight except in extraordinary circumstances. When the prosecutor performs "quasi-judicial" acts, he enjoys absolute immunity, but when he performs "investigative" or "administrative" acts, he enjoys only qualified immunity. To determine what kind of immunity cloaks the prosecutor in this particular case, the court examined the functional nature of the prosecutorial behavior, rather than the status of the person performing the act. (Fishkill Correctional Facility, New York)

U.S. Supreme Court
QUALIFIED
IMMUNITY

Malley v. Briggs, 106 S.Ct. 1092 (1986). A police officer is not entitled to absolute immunity from a civil rights claim based on an allegedly false arrest even when he makes the arrest pursuant to a warrant which he has sought out. As a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law. If a reasonably well trained officer in the position of the officer in question would have known that his affidavit failed to establish probable cause for the arrest or that he should not have applied for the warrant, then his application for the warrant was not objectively reasonable because it created the unnecessary danger of an unlawful arrest. (State Police, Rhode Island)

U.S. Appeals Court
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY

Nelson v. Balazic, 802 F.2d 1077 (8th Cir. 1986). Victims of the parolee's crimes brought a Section 1983 action against a parole officer and members of the parole board. The United States District Court for the Western District of Missouri dismissed the action, and the plaintiffs appealed. The court of appeals held that: (1) members of the parole board were entitled to absolute immunity, and (2) the parole officer's actions did not fall outside the bounds of her qualified immunity. Members of the parole board were entitled to absolute immunity from tort liability to victims of parolee's subsequent criminal acts. The parole officer was entitled to qualified immunity from tort liability because the officer's actions were functionally equivalent to those of a police officer. The parole officer was immune from tort liability to victims of parolee's crimes because the officer, who was entitled to qualified immunity, did not violate the victims' constitutional rights when the officer failed to immediately place the parolee in custody upon learning that he had violated parole and had made threats against one of the victims. (Missouri)

U.S. District Court
QUALIFIED
IMMUNITY

Olynick v. Taylor County, 643 F.Supp. 1100 (W.D. Wis. 1986). A former prisoner in a county jail brought a civil rights action, claiming that she was a victim of sexual discrimination and was denied due process when she was not allowed to exercise work release privileges during her jail sentence. On cross motions for summary judgment, the district court held that: (1) the plaintiff was denied liberty without due process when she was denied the right to exercise work release privileges because of her transfer to another county jail; (2) the plaintiff's inability to exercise work release privilege outside of county to whose jail she was transferred did not constitute false imprisonment under Wisconsin law; and (3) the sheriff was entitled to qualified immunity because the prisoner's constitutional right to exercise work release privileges was not clearly established. (Taylor County Jail, Wisconsin)

U.S. District Court

Ruley v. Nevada Bd. of Prison Com'rs., 628 F.Supp. 108 (D. Nev. 1986). Prisoner was properly assessed restitution for medical expenses incurred by state following his assault of another prisoner; "freezing" of his accounts upheld. A prison disciplinary committee found a prison inmate guilty of assaulting another inmate and assessed restitution against him for medical expenses incurred by the state as a result of assault. The prisoner's inmate trust fund account was frozen. The prisoner brought a civil rights action seeking declaratory judgment establishing the unconstitutionality of state legislation and regulations under which restitution was awarded. The federal district court held that: (1) although the prison procedure which authorized the freeze of the inmate's account went beyond the Board of Prison Commissioners' authority when it was promulgated, the Nevada legislature, in effect, ratified the procedure by amendment made to the enabling statute; (2) the prisoner had no basis for civil rights action; and (3) the prisoner was provided a meaningful opportunity to refute the case against him. The court ruled that the Nevada Board of Prison Commissioners, as an agency of the state, was entitled to dismissal of the civil rights action against it, based on sovereign immunity. (Nevada State Prison)

U.S. Appeals Court

Thorne v. City of El Segundo, 802 F.2d 1131 (9th Cir. 1986). City officials are immune from liability in this sex discrimination case because the law on unregulated, unrestrained employer inquiries into personal sexual matters was not clearly defined at the time, says the 9th U.S. Circuit Court of Appeals. Deborah Thorne filed suit against the City of El Segundo, Calif., when the city refused to hire her as a police officer based on results of polygraph testing about her past sexual activities. Thorne alleged the city discriminated against her in the application process and violated her constitutional right of privacy. Although the trial court found Thorne had been discriminated against, she was awarded only \$812 back pay from the date of refusal until the date she voluntarily resigned her position as clerk typist. Thorne appealed this award, and the appeals court determined the back pay should, in fact, have been continued until the date of the judgment. The appellate court also concluded the city officials should not be found liable for their actions, because the constitutional right to privacy and free association, which was allegedly violated by conducting a broad, unregulated inquiry into her off duty sexual activities, was not a "clearly established statutory or constitutional right of which a reasonable person would have known." Although Thorne's case did establish this right, the court held the officials, at the time they questioned Thorne, could not be expected to "predict the future course of constitutional law." Ruling the city officials immune from liability, the court remanded the case to the trial court for determination of the appropriate back pay. (El Segundo Police Department)

U.S. Appeals Court
ABSOLUTE
IMMUNITY

Tripati v. U.S.I.N.S., 784 F.2d 345 (10th Cir. 1986), cert. denied, 484 U.S. 1028. Action was brought for alleged violations of the plaintiff's civil rights, abuse of process and malicious prosecution, and illegal deportation. The district court dismissed the suit against four defendants who were federal employees, and the plaintiff appealed. The court of appeals held that: (1) the plaintiff's allegations against the United States attorney who prosecuted him for federal crimes involved either initiation for presentation of the government's case, and thus, the attorney was absolutely immune from the suit; (2) actions of the immigration officer in reporting the plaintiff's conviction to the Immigration and Naturalization Service as a deportable offense, did not result in a clear violation of constitutional rights of which a reasonable person should have known, and thus, the immigration officer's qualified immunity protected him from the suit; and (3) the role of federal probation officers in assisting in decisions regarding pretrial release and the selection of an appropriate sentence were intimately associated with the judicial phase of criminal prosecution, and thus, officers were absolutely immune from the suit. (U.S. Immig. & Natrl. Service, Colorado)

U.S. District Court
ABSOLUTE
IMMUNITY

Vinson v. Barkley, 646 F.Supp. 39 (W.D.N.Y. 1986). A prisoner's claim against the chairman of New York State Board of Parole alleging due process violations resulting from his parole revocation would be dismissed. The chairman was entitled to absolute immunity in his role from claims for money damages based on actions taken in his official capacity. (Groveland Correctional Facility, New York)

1987

U.S. District Court
QUALIFIED
IMMUNITY

Beck v. Kansas University Psychiatry Foundation, 671 F.Supp. 1552 (D. Kan. 1987). Two persons who worked in a hospital emergency room were shot by a paroled prisoner with mental problems. Their families filed a lawsuit against the members of the Kansas Adult Authority, charging that the prisoner's release was negligent under state law and that the two persons who were killed were denied constitutional rights by the release. The court held that the individual members of the Kansas Adult Authority were immune from liability on the basis of the Kansas Tort Claims Act, but allowed claims against the Secretary of Corrections and the director of the Penitentiary to proceed because they had not raised their immunity under Kansas Tort Claims Act as a defense. (Kansas Adult Authority)

U.S. District Court
QUALIFIED
IMMUNITY

Davenport v. DeRobertis, 653 F.Supp. 649 (N.D. Ill. 1987), *cert. denied*, 488 U.S. 908. Inmates brought a class action on behalf of all present and future inmates at the maximum security prison confined to segregation for ninety or more consecutive days, alleging deprivation of their constitutional rights, against present and former wardens of the prison and the director of the Illinois Department of Corrections and seeking injunctive relief. The district court held that: (1) evidence supported the jury's finding of cruel and unusual punishment; (2) the award of nominal damages was proper; (3) the defendants were entitled to qualified immunity from compensatory or punitive damages as sued in their individual capacities; and (4) the inmates confined in segregation in maximum security prison for a period of ninety or more consecutive days were entitled to injunctive relief ordering that they be allowed, except during temporary emergencies and lockdowns, three showers per week and five hours of out-of-cell exercise per week. (Stateville Correctional Center, Illinois)

U.S. District Court
42 U.S.C.A.
SECTION 1983

Davis El v. O'Leary, 668 F.Supp. 1189 (N.D.Ill. 1987). A prisoner brought a civil rights lawsuit against the Prisoner Review Board and others, alleging that they discriminated against African-American prisoners by granting parole requests to European-American prisoners at a faster rate than it did the African-American prisoners. The federal district court found members of the Parole Board to be absolutely immune from Federal Civil Rights liability for parole decisions and the court dismissed the portion of the complaint that implicated the Parole Board. However, the court stated that if the inmates' allegations were proven, it would be proper to issue an injunction against the board's discriminating against parole applicants because of their race. The court denied the prisoner's request for a mandatory injunction ordering the Prisoner Review Board to release him because of a rule enunciated by the U.S. Court of Appeals for the Seventh Circuit in Crump v. Lane, 807 F.2d 1397 (7th Cir. 1986), that a writ of habeas corpus is the sole federal remedy for state prisoners seeking release from prison. (Illinois Prisoner Review Board)

U.S. District Court
QUALIFIED
IMMUNITY
GOVERNMENTAL
IMMUNITY

Henderson v. Harris, 672 F.Supp. 1054 (W.D. Ill. 1987). A state correctional facility prisoner who was temporarily housed at a federal institution so he could testify in a federal trial, claims that while he was there, he contracted hemorrhoids. He alleged that he was repeatedly denied access to medical personnel and care, and that he was deprived of treatment which a physician had prescribed as medically necessary. The inmate also alleged that prescribed medicine was taken from him, and he was operated on without his consent by a clinician who had no license to practice surgery nor any relevant surgical experience. The plaintiff was also accused of having a venereal disease. The federal court allowed the inmate to proceed with his claims against the prison warden and his lieutenant. Since the standard of care necessary had been clearly established years earlier in Estelle v. Gamble, 429 U.S. 97, (1976), the court said the defendants were not entitled to qualified or absolute immunity from an allegation that they deprived the inmate of seriously needed medical treatment. Because the duty to provide medical care was nondelegable, and the fact that the government had contracted with a private agency to perform these services would not relieve it of liability, it approved the suit against the U.S. government for alleged negligence in providing medical care under the Tort Claims Act, 28 U.S.C. Section 1346 (b) and 2674. Contracting out aspects of prison administration or services will not lead to lessened exposure to governmental liability. Finally, the federal court stated that the Tort Claims Act did not give it jurisdiction to hear a defamation complaint. (Metropolitan Correctional Center, Chicago, Illinois)

U.S. District Court
GOVERNMENTAL
IMMUNITY

Johnson v. Kelsh, 664 F.Supp. 162 (S.D.N.Y. 1987). A parole officer and a fire marshall were absolutely immune from liability to a parolee for damages under Section 1983 for their alleged improper conduct during the course of parole revocation proceedings. The parole officer instituted the proceedings and performed a function comparable to that of a prosecutor in a criminal trial. The fire marshall was a witness in support of the revocation petition. According to the federal district court, a function that is performed by a parole officer in instituting parole revocation proceedings was comparable to that of a prosecutor in a criminal trial, and thus, the officer was entitled to absolute immunity for a civil suit. (New York Parole Office, Fire Marshal)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Lappe v. Loeffelholz, 815 F.2d 1173 (8th Cir. 1987). According to a federal appeals court, corrections officials in Iowa who forcibly injected an inmate with psychotropic medication were immune from suit because the law on the subject was unclear. The plaintiff was an inmate who alleged that he had been forcibly medicated without a hearing. The court found that the inmate should have been given notice and a hearing or other opportunity to establish a reason for refusing the medication. But, since the law requiring such hearings was not clearly established at the time and since officials are not required to guess the future path of the law, they were immune from this suit. (Iowa State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Muhammad v. Wainwright, 839 F.2d 1422 (11th Cir. 1987). An inmate brought a civil rights action in which he alleged that prison officials had violated his First Amendment rights by disciplining him. The inmate was disciplined for refusing to respond to the name under which he was committed to the prison, stating that he wanted to be called by his Islamic name. The federal appeals court ruled that, at the time the prisoner filed his lawsuit, the prison officials were entitled to qualified immunity because these were not a "clearly established constitutional right" to not be disciplined for failure to respond to his committed name during role call. (Florida State Prison, Starke, Florida)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Small v. Sutton, 653 F.Supp. 900 (10th Cir. 1987). A parolee brought a Section 1983 civil rights action against members of the Colorado state parole board for imposition of conditions of parole alleged to constitute cruel and unusual punishment. A magistrate's order concluded that the state parole board members were entitled to qualified immunity, and the board members filed an objection to the magistrate's order. The district court held that parole board members were entitled to absolute immunity when they granted, denied, revoked, or imposed conditions of parole.

The plaintiff was convicted of sexual assault on a child and sentenced to five years in the Colorado Department of Corrections. When the plaintiff became eligible for parole, defendants imposed the standard parole conditions regarding release, residence, conduct, report, weapons and association. The parole board also imposed the following additional conditions: (1) [plaintiff] parolee agrees to participate in a mental health program at the request of his parole agent and complete the program recommended by the proper authorities; (2) [plaintiff] parolee agrees to participate in a monitored antabuse therapy program, if medically approved, until terminated by his parole agent or the parole board and agrees to pay all costs; and (3) [plaintiff] will not be in the company of anyone under the age of eighteen without proper adult supervision. (Colorado Department of Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Turney v. Scroggy, 831 F.2d 135 (6th Cir. 1987). An inmate brought a Section 1983 action against prison officials based on a disciplinary report charging the inmate with sexual assault upon a prison nurse. Prison officials moved for summary judgment on grounds of qualified immunity. The federal appeals court held that (1) qualified immunity available to members of prison adjustment committee applied to the warden, prison nurse, and investigating officer; (2) "some evidence" supported the decision finding the inmate guilty of sexually assaulting the nurse; and (3) determination that the inmate's due process rights were not violated in disciplinary proceeding extinguished the inmate's claim for injunctive relief. (State Penitentiary, Eddyville, Kentucky)

1988

U.S. District Court
QUALIFIED
IMMUNITY

Alvarez Kerkado v. Otero de Ramos, 693 F.Supp. 1366 (D.Puerto Rico 1988). The representatives of an inmate who was murdered by other inmates filed a civil rights action against prison officials. On the defendants' motion for summary judgment, the district court, granting the motion, found that the prison officials were entitled to qualified immunity from a civil rights claim where allegations of the complaint referred to conditions which were either beyond their control or, if within their control, which they took every measure to alleviate, notwithstanding the officials' knowledge of a seriously deficient system. Allegations that the prison officials were aware of overcrowding not only in the inmate's correctional institution, but in the total corrections system, lack of penal personnel, and limited economic resources as well as a court decree and prior law, were not sufficient to warrant a finding of deliberate indifference precluding the assertion of qualified immunity by prison officials against claims that the officials acted with deliberate indifference or reckless disregard to the safety of an inmate who was murdered by other inmates after he was removed from voluntary isolation. (Rio Piedras State Penitentiary, Puerto Rico)

State Appeals Court
QUASI-JUDICIAL
IMMUNITY

Arteaga v. State, 532 N.Y.S.2d 57 (Ct.App. 1988). Correctional facility inmates brought actions against the state for damages resulting from the prosecution of disciplinary charges against them. The Court of Claims dismissed the complaints, and the inmates appealed. The State Supreme Court, Appellate Division affirmed, and the inmates appealed by permission. The court of appeals, affirming the decision, found that where the state correctional facility employees acted under the authority of and in full compliance with governing statutes and regulations in commencing and conducting formal disciplinary proceedings, their actions constituted discretionary conduct of a quasi-judicial nature for which the State had absolute immunity. The State's absolute immunity for quasi-judicial discretionary actions of its employees is founded upon public policy and is generally said to reflect a value judgment that public interest in having officials free to exercise their discretion unhampered by the fear of retaliatory lawsuits outweighs the benefits to be had from imposing the liability. The court rejected an argument that correctional officers, like police officers, are only entitled to qualified immunity. "Correction officers," the court

noted, "unlike police officers, are responsible 'for the safety, security and control' of correctional facilities." In the "tense environment of prisons," the court continued, "proper discipline is essential for the maintenance of order and control." The court further noted that the inmates could still sue the state in state court for actions of the employees taken beyond their authority or in violation of the governing rules and regulations. (Great Meadow Correctional Facility, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Baez v. Rapping, 680 F.Supp. 112 (S.D.N.Y. 1988). An inmate charged that he was segregated and discriminated against after he tested positive for the AIDS virus. According to the inmate, he was denied access to courts, the law library, church and recreational activities after medical authorities issued advice to staff to avoid his body fluids. The district court held that the medical director and his staff were entitled to qualified immunity against the lawsuit. The claim against the warden was allowed to proceed. The warden claimed the detainee was in segregation because of his "deviant behavior," not because of his medical condition. There was no evidence given to the court that the inmate had been given any notice of the reason for his segregation or a chance to be heard. Therefore, there was a question of fact as to whether or not he had been deprived of his rights without due process. Although an earlier decision by the court had upheld the authority of the jail to segregate inmates with AIDS, the court found in this case that the inmate had a right to know of AIDS was the reason for his segregation. The court allowed the claim for punitive damages to proceed, since the prisoner's charges were that he "may be the victim of malicious and discriminatory treatment" because of his condition. (Westchester County Jail, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Clark v. Evans, 840 F.2d 876 (11th Cir. 1988) A civil rights action was brought, based on the fatal shooting of a prisoner who was attempting to escape from the state prison, against the Commissioner of the State Department of Corrections, the prison warden, the guard who fatally shot the prisoner, and guards who were on yard or in building complex nearby when prisoner attempted to escape. The district court dismissed all claims against all defendants in their official capacities, granted summary judgment for the commissioner and guards located near the prisoner, but rejected qualified immunity defense asserted by the warden and guard who shot the prisoner in their individual capacities. The warden and the guard who shot the prisoner appealed, and the plaintiffs appealed the dismissal of the other defendants. The appeals court held that: (1) a reasonable officer could have believed that the guard's actions in shooting the prisoner were lawful, and accordingly, the guard was entitled to qualified immunity for use of deadly force; (2) the commissioner was not liable on theory he had instituted and perpetuated a policy that committal orders of state court judges would be ignored and that the prisoner's death occurred as a direct result of the prisoner not having been transferred to a mental hospital pursuant to involuntary commitment order, and (3) nearby guards were not liable on the theory that they were deliberately indifferent to a prisoner's safety or serious medical needs. The court noted that, in determining whether a state prison guard who fatally shot a prisoner who was attempting to escape was entitled to qualified immunity in a civil rights action based on the shooting, the proper inquiry was not whether escape could reasonably have been prevented in a less violent manner, but rather, whether a reasonable officer with information available to the guard who shot the prisoner could have believed that less violent means were not reasonably available (see Anderson v. Creighton, 107 S.Ct. 3034 (1987)). The plaintiffs also argued that the use of deadly force in this instance was unlawful, since the law forbids the execution of insane persons. The court disagreed, noting that the inmate was not executed (killed as a punishment), but instead was shot in an effort to prevent escape. (Georgia State Prison)

U.S. Appeals Court

Fuller v. Georgia State Bd. of Pardons and Paroles, 851 F.2d 1307 (11th Cir. 1988). A black inmate brought a civil rights action against the state Board of Pardon and Parole, alleging that he was denied fair opportunity for parole due to racial discrimination. The federal district court granted the Board's motion for summary judgment, and the inmate appealed. The Court of Appeals held that: (1) the state Parole Board was protected from imposition of civil damages by sovereign immunity pursuant to the Eleventh Amendment; and (2) statistical evidence that, historically, white rapists were granted parole more often than black rapists was insufficient to establish prima facie case of racial discrimination, absent evidence that black rapist challenging Parole Board's policies was similarly situated with any inmates who were granted parole. According to the court, individual members of state Parole Board are entitled to absolute quasi-judicial immunity from suit for damages. (Georgia Board of Pardons and Paroles)

U.S. District Court
QUALIFIED
IMMUNITY

LaFrance v. Rampone, 678 F.Supp. 72 (D.Vt. 1988). According to a federal district court, parole officers named as defendants in a civil rights action were entitled to a qualified, rather than absolute, immunity from suit. The plaintiff claimed that the parole officers intentionally included erroneous information in a parole eligibility report in an effort to deprive him of parole. (Rutland Community Correctional Center, Vermont)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Matiyn v. Henderson, 841 F.2d 31 (2nd Cir. 1988), cert. denied, 108 S.Ct. 2876. A federal appeals court ruled that an inmate had no constitutionally based liberty interest which was subject to due process protection with respect to his being transferred between prisons. Even if his four-day confinement in a special housing unit prior to the transfer deprived him of a protected liberty interest, corrections officials were protected from liability by the doctrine of qualified immunity. Finally, even if he was placed in the special housing unit partly for punitive reasons, he was not entitled to the procedures normally associated with disciplinary confinement, because the confinement would have been undertaken in any event for administrative purposes alone. The court also found that prison inmates generally have no liberty interest in remaining within the general prison population and out of administrative segregation, unless the state has chosen to create such an interest by enacting certain statutory or regulatory measures. The prisoner, who was a leader of the Sunni Muslim sect, had been prevented from attending communal religious services and claimed his first amendment rights had been violated. The court held that these actions were permissible because the reasons were related to legitimate penological objections and there were rumors of impending trouble among fractions of the Muslim community of prisoners. Also, weapons were found in a folder thought to belong to the inmate. 108 S.Ct. 2876 writ of certiorari denied. (Auburn Correctional Facility)

U.S. Appeals Court
JUDICIAL
IMMUNITY

Oliva v. Heller, 839 F.2d 37 (2nd Cir. 1988). A federal inmate filed action against a judge's law clerk for civil damages arising when the law clerk worked on the inmate's petition for postconviction relief after she had accepted a position with the United States attorney's office. The federal district court dismissed the suit and the inmate appealed. The appeals court held that the absolute immunity enjoyed by judges in the exercise of their judicial authority extended to the actions of law clerks assisting the judges in carrying out judicial functions.

U.S. Appeals Court
QUALIFIED
IMMUNITY

Parker v. Williams, 855 F.2d 763 (11th Cir. 1988). A former prisoner in a county jail who was kidnapped and raped by a former chief jailer brought a Section 1983 action against the former chief jailer, the county sheriff, the county itself, and individual county commissioners. Claims were also asserted under Alabama tort law. The United States District Court entered judgment on a jury verdict awarding the plaintiff compensatory damages of \$100,000, and punitive damages of \$100,000 against the sheriff and the county. The defendants appealed. The Court of Appeals certified the question to the Supreme Court of Alabama and received a response, 519 So.2d 442. Thereafter, the Court of Appeals initially held that: (1) the sheriff was immune from the state law tort claims; (2) the evidence supported the jury finding that the sheriff acted pursuant to an inadequate employment policy and the policy could fairly be ascribed to the county; (3) the sheriff was not entitled to qualified immunity; and (4) the county could not be held liable for punitive damages. On rehearing, however, the appeals court vacated judgments against the sheriff and the county. 862 F.2d 1471. According to the court, under Alabama law, the county was not vicariously liable for tort claims asserted against the sheriff arising from the chief jailer's kidnapping and rape of a county prisoner, since there was no employer-employee relationship between the county and the sheriff. The sheriff's gross negligence in hiring a chief jailer who kidnapped and raped a county prisoner supported county liability in a Section 1983 action and the jury finding of specific gross negligence evidenced a more general finding that the sheriff's negligent act was traceable to a policy or custom of the county. Based on the theory that the sheriff created an official policy or custom of not performing reasonable background checks of potential jailers or on theory that he was grossly negligent in hiring or in training the chief jailer when he knew or should have known that the jailer was a convicted sex offender with various psychiatric problems, there would have been no reasonable grounds, based on established principles of law, for the sheriff to believe that hiring as the chief jailer, a convicted sex offender with a history of mental problems was a permissible action. (Macon County Jail, Alabama)

U.S. Appeals Court
JUDICIAL
IMMUNITY

Shelly v. Johnson, 849 F.2d 228 (6th Cir. 1988). An inmate brought a 42 U.S.C.A. Section 1983 civil rights action against a prison hearing officer and prison officials. A federal appeals court found the officer was entitled to absolute immunity from federal civil rights lawsuits because the officer was an attorney specially appointed to conduct disciplinary hearings and was completely independent of prison officials and was guided by strict statutory guidelines and was, for all practical purposes, an administrative law judge. (Michigan Intensive Program Center)

U.S. Appeals Court
ABSOLUTE
IMMUNITY
42 U.S.C.A.
SECTION 1983
JUDICIAL
IMMUNITY

Turner v. Barry, 856 F.2d 1539 (D.C. Cir. 1988). An inmate brought an action against the mayor of the District of Columbia and probation officers employed by the Superior Court for the District of Columbia. The district court dismissed the complaint, and appeal was taken. The appeals court, affirming the decision, found that District of Columbia probation officers were absolutely immune from liability in a civil rights action under Section 1983 for alleged errors in the investigation and preparation of presentence reports.

The court of appeals found that probation officers enjoy the same absolute immunity from liability for damages in Section 1983 actions as that granted judges when: 1) their activities are integrally related to the judicial process, and 2) they exercise discretion comparable to that exercised by a judge. "The pre-sentence report is an integral part of the judicial function of sentencing," said the court. "When preparing pre-sentence reports, the probation officer acts at the specific request of the court and submits the results of the investigation to the sentencing court for its evaluation." In carrying out this duty, said the court, probation officers typically serve as an "arm of the sentencing judge." (Lorton Reformatory, District of Columbia)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Unwin v. Campbell, 863 F.2d 124 (1st Cir. 1988). A prison inmate sued state and local police officers seeking damages for injuries sustained during the quelling of a disturbance. Defendants moved for summary judgment on the grounds of qualified immunity. The U.S. District Court denied the motion as to certain defendants, and they appealed. The appeals court reversing in part and affirming in part, found that two of the defendants were entitled to qualified immunity, absent evidence that they had any contact with the defendant; but there were issues of fact, precluding summary judgment in favor of the remaining defendants, as to the magnitude of the disturbance in question.

Allegations of the complaint to the effect that one or more of the state troopers or police officers seriously injured the prison inmate when they unjustifiably struck him several times while he was innocently standing in the dayroom observing an isolated struggle between two inmates, if true, would tend to show that the officers violated clearly established law and thus were not entitled to qualified immunity. (Merrimack County House of Correction, Boscawen, New Hampshire)

U.S. District Court
QUALIFIED
IMMUNITY

Vega v. Parsley, 700 F.Supp. 879 (W.D. Tex. 1988). Parents of a juvenile who committed suicide while in a juvenile detention facility brought a civil rights action against the county, the sheriff, and the director of the facility. On the defendants' motion for summary judgment, the district court found that there was no eighth amendment violation with respect to conditions in the facility, including the presence of a shower curtain rod on which the juvenile hung himself. No constitutional violation was shown on the theory that the juvenile was denied treatment. No claim was stated on the theory of failure to staff, train and supervise the facility. No due process violation was established on the theory of summary judgment which caused the juvenile's death; and the defendants were entitled to qualified immunity.

Even assuming that the action by the deputy in leaving the juvenile unattended in a cell for 15 or 20 minutes, during which time the juvenile committed suicide, was negligence or gross negligence, the conduct could not be imputed to the county for purposes of liability under the civil rights statute. (Gonzales County Detention Facility, Texas)

U.S. District Court
QUALIFIED
IMMUNITY

Zaire v. Dalsheim, 698 F.Supp. 57 (S.D.N.Y. 1988). An inmate brought a Section 1983 action against a prison superintendent alleging that forcible administration of a diphtheria-tetanus inoculation violated his eighth and fourteenth amendment rights and his constitutional right of privacy. On the defendant's motion for summary judgment, the district court found that the eleventh amendment did not bar the inmate's suit. The inmate failed to state a viable claim for violation of the eighth amendment or a right to privacy; and the doctrine of qualified immunity relieved the defendant of personal liability. The prisoner, along with all other prisoners in his cell block, was given a diphtheria-tetanus injection as part of the routine processing of prisoners entering the state prison population. He was not given the right to refuse the injection and was threatened with solitary confinement for refusing the injection. He filed a civil rights lawsuit alleging that this constituted cruel and unusual punishment and a violation of his right to privacy. The federal court disagreed, stating that the forcible injection did not represent indifference to the inmate's rights, but rather was administered solely to protect the inmate and others in the institution from the spread of contagious diseases. The court found that no privacy right was violated, but that even if it had been, it was outweighed by the state's compelling interest in preventing the spread of deadly diseases among closely quartered prisoners. (Downstate Correctional Facility, New York)

1989

U.S. Appeals Court
QUALIFIED
IMMUNITY

Arnold v. Jones, 891 F.2d 1370 (8th Cir. 1989). An inmate sued prison officials to recover for damages suffered when he was beaten by another inmate. The court of appeals held that unarmed corrections officers had no constitutional duty to physically intervene in an assault by one inmate on another, when intervention may cause them serious injury or worsen the situation. The court also ruled that unarmed corrections officers were entitled to qualified immunity with respect to their failure to physically intervene to break up an assault with a pipe by one inmate on another where they did order the assaulting inmate to stop the assault. (Iowa State Penitentiary)

U.S. District Court
JUDICIAL IMMUNITY

Banks v. Klapish, 717 F.Supp. 520 (W.D. Mich. 1989). A civil rights action was brought against a hearing officer, a corrections officer and a deputy warden by a Michigan state inmate following a misconduct hearing. This resulted in the inmate being found guilty of disobeying a direct order and displaying threatening behavior.

The U.S. District Court found that the hearing officer was entitled to absolute judicial immunity from liability in the inmate's action challenging the acts of the officer in conducting an administrative hearing. This was a quasi-judicial act within the hearing officer's jurisdiction. (Michigan Reformatory, Ionia, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Birrell v. Brown, 867 F.2d 956 (6th Cir. 1989). An inmate at the Michigan State Prison brought a civil rights action challenging the conditions of his confinement. The director of the state prison system and the superintendent of the prison moved for a summary judgment on the basis of qualified immunity. The district court denied the motion. On appeal, the court found that the officials' reliance on the district court's permission of enlargement of time for them to file a motion for reconsideration of its order excused the failure to file notice of appeal in a timely fashion and the officials were protected by qualified immunity.

The court noted that a professional, sued in his individual capacity, will not be liable for damages if he was "unable to satisfy his normal professional standards because of budgetary restraints." The director of the Michigan prison system and the superintendent of the correctional facility were protected by qualified immunity from the inmate's civil rights action challenging allegedly inhumane conditions of confinement, including the understaffing of the institution and housing prisoners before desired or planned renovations at the facility could be completed. (Michigan's Western Wayne Correctional Facility)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Brown v. Frey, 889 F.2d 159 (8th Cir. 1989), cert. denied, 110 S.Ct. 1156. An inmate brought a civil rights action against prison officials, alleging that they deprived him of constitutional rights in connection with various disciplinary charges. The U.S. District Court entered judgment in favor of the inmate on some of his claims and appeal was taken. The appeals court found that the inmate did not have a constitutional right to a hearing within three working days following his administrative confinement for disciplinary violations. Prison officials did not violate the inmate's clearly established rights when they refused to permit the inmate to call various witnesses at disciplinary hearings, entitling them to qualified immunity in a civil rights action based on such refusal. Officials rejected the inmate's request because they believed that having one guard testify against another guard would undermine prison authority or because requested witnesses would give irrelevant or unnecessary testimony.

The court also found that the inmate did not have a clearly established right to be represented by a counsel substitute at the disciplinary proceeding, entitling the prison officials to qualified immunity based on their alleged denial of a counsel substitute. The inmate acted as a law clerk while incarcerated at the prison, and the conduct violations of which the inmate was charged were not complex. (Missouri Eastern Correctional Center)

U.S. District Court
ELEVENTH
AMENDMENT

Cameron v. Metcuz, 705 F.Supp. 454 (N.D. Ind. 1989). An inmate brought a civil rights action against prison officials for their alleged failure to protect an inmate from an attack by another inmate who was diagnosed as having AIDS. On the officials' motion to dismiss, the district court found that there were insufficient allegations of deliberate indifference to state a claim under the eighth amendment, and the state scheme for reporting and preventing the spread of communicable diseases did not create a liberty interest in the inmate subject to due process protections. The medical director, the superintendent, and the general services director at the correctional facility were entitled to immunity under the eleventh amendment for claims against them in their official capacities for money damages for failing to protect an inmate from the attack by another inmate who was diagnosed as having AIDS. (Westville Correctional Center, Indiana)

U.S. District Court
QUALIFIED
IMMUNITY

Charron v. Medium Sec. Inst., 730 F.Supp. 987 (E.D. Mo. 1989). A former pretrial detainee brought a civil rights action against the city and staff members of a city workhouse, alleging various constitutional violations which occurred in connection with his refusal to work in the kitchen of the workhouse, and the medical treatment that was afforded him for a workhouse injury. The U.S. District Court found that as a pretrial detainee, the plaintiff has no claim under the eighth amendment for cruel and unusual punishment, arising from his being placed in segregation for refusing to work in the workhouse kitchen, however the placement in segregation did amount to punishment in violation of his due process rights.

The court also found that the members of the workhouse staff were not entitled to qualified immunity from the civil rights claim; the law clearly established that the unnecessary imposition of security confinement on a pretrial detainee violated the detainee's rights to due process. (Medium Security Institution, Missouri)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Coffman v. Trickey, 884 F.2d 1057 (8th Cir. 1989), cert. denied, 110 S.Ct. 1523. A prisoner brought an action alleging that a prison official violated his constitutional and statutory rights in imposing a punishment. The U.S. District Court entered a judgment in favor of the prison official and the prisoner appealed. The appeals court found that the prisoner was deprived of due process of law, that a statute prohibiting the confinement of inmates in the adjustment unit in excess of ten days was violated, and that although the prison officials did have qualified immunity as to the statutory violation they did not have qualified immunity as to the constitutional violation. According to the court, the prisoner was deprived of liberty without due process when he was punished by prison officials for violating a rule prohibiting violation of published rule without first receiving notification of which published rule he violated. The rules relied upon by prison authorities did not apply to the situation at hand. (Eastern Correctional Center, Pacific, Missouri)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Edwards v. Gilbert, 867 F.2d 1271 (11th Cir. 1989). A Section 1983 action was brought by an estate on behalf of a juvenile who committed suicide while in jail. The U.S. District Court denied the officials' motion for summary judgment in regard to counts against them in their individual capacities, and appeal was taken. The appeals court found that the conduct by jail officials in leaving a seemingly sleeping juvenile inmate, who had never threatened or attempted suicide and who had never been considered a suicide risk, in a secure cell for 45 minutes with another sleeping juvenile did not constitute deliberate indifference to the inmate's safety from self-harm. The individual officers were entitled to immunity from a civil rights action against them arising out of the inmate's suicide. The prisoner, who was awaiting sentencing, was not deprived of procedural due process under the fourteenth amendment by the placement in a particular cell or by the jailer's failure to observe him for an interval of more than 15 minutes. There was no contention that the actions of the jailers would have been proper if some sort of hearing had preceded the events surrounding the prisoner's suicide. Statutes and regulations governing the daily operations of county jails did not give the prisoner a right to an administrative hearing.

Jail officials did not demonstrate a deliberate indifference to the prisoner's safety from self-harm by the fact that the prisoner requested an appointment with the jail psychologist but that there was no record that he had seen one. Given the fact that it was not unusual for inmates to request to see a jail psychologist, the prisoner's request did not put jailers on notice that he was a potential suicide risk. It was also stated by the court that the failure of the jailers to adhere to state laws and regulations on the housing of juveniles in adult jails did not demonstrate a deliberate indifference toward the prisoner's safety from self-harm. In addition, standing alone, the violation of state laws and regulations requiring the sight and sound separation of juvenile and adult prisoners was not the basis for establishing a constitutional violation. (Okaloosa County Jail, Florida)

U.S. District Court
QUALIFIED
IMMUNITY

Eggleton v. Gluch, 717 F.Supp. 1230 (E.D. Mich. 1989). An inmate brought an action against the prison warden, the chief correctional supervisor, and the unit manager to recover for violations of due process and the eighth amendment in connection with continuing administrative detention. The defendants moved for a summary judgment. The U.S. District Court found that the warden, supervisor, and manager were entitled to qualified immunity from liability for the continued administrative detention of the inmate during a F.B.I. investigation after a disciplinary committee considered an attempted escape charge to be unfounded. According to the court, the warden, chief correctional supervisor, and unit manager were objectively reasonable when they continued administrative detention of the inmate and failed to solicit input in a review process during a F.B.I.'s continuing investigation of the inmate's alleged involvement in an escape plan, and; therefore, they were entitled to qualified immunity from liability for the alleged violation of due process, even though the inmate remained in detention after the prison committee found the escape charge to be unfounded and even though he faced a subsequent charge of conspiring to escape and was transferred to another prison. The F.B.I.'s continuing investigation justified the refusal to release the inmate from administrative detention and the failure to solicit the inmate's input in the review process, even though memorandum giving reasons for the detention cited a regulation that permitted the detention pending the investigation of a violation of Bureau regulations, rather than the regulation that permitted detention during an investigation or trial for a criminal act. (Federal Correctional Facility, Milan, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY
SOVEREIGN
IMMUNITY

Frazier v. King, 873 F.2d 820 (5th Cir. 1989), cert. denied, 110 S.Ct. 502. After being stymied in her attempts to correct nursing practice violations first by her supervisor and later by the warden, the plaintiff contacted the Louisiana State Board of Nursing. She reported that inmates were being denied medical care and that nurses were changing doctors' orders, completing prescription forms and making medical diagnosis. In making her charges to the board, she forwarded copies of inmate records to them.

After learning of her actions, the warden called her into his office and accused her of making malicious, derogatory and slanderous statements. Shortly thereafter, she was fired on the grounds that she made malicious statements and that she had

violated department rules when she had copied confidential inmate records without the inmates' consent. The nurse then brought a suit against numerous state officials under the federal civil rights statute for violations of her rights under the first and fourteenth amendments and under state law for claims of retaliatory discharge and infliction of emotional, physical, and mental injuries. The U.S. District Court entered judgment from which the defendants appealed. The appeals court found that the discharged nurse was not barred from bringing a federal civil rights suit seeking lost wages, compensatory and punitive damages and attorney's fees following the Louisiana Civil Service Commission determination that she was entitled to reinstatement with back pay, under federal law or Louisiana principles of *res judicata*. The nurse's speech involved a matter of public concern, disruption from the nurse's "whistle-blowing" was minimal interest when weighed against the exposure of unethical medical practices affecting hundreds of inmates, and the warden's warning that the nurse would lose her job if she filed a complaint with the State Board of Nursing was sufficient evidence that her speech motivated the decision to fire her. The court also found that the state officials were not shielded by an eleventh amendment grant of sovereign immunity or by qualified immunity. (Wade Correctional Center, Louisiana)

U.S. District Court
SOVEREIGN
IMMUNITY

Gibson v. Matthews, 715 F.Supp. 181 (E.D. Ky. 1989). A female prisoner sued prison officials in both their individual and official capacities based on allegations that while incarcerated she was not provided access to abortion facilities as she had requested. On the defendants' motion for summary judgment, the U.S. District Court found that claims brought against the defendants in their official capacities were barred by sovereign immunity, and the mere negligence of the prison officials in denying the prisoner access to abortion facilities did not constitute a denial of substantive due process rights for the purposes of the prisoner's damage claims against officials in their individual capacity. The court stated that the conduct alleged by the plaintiff amounts "at best to negligence," and the mere negligence of prison officials in denying the prisoner access to abortion facilities based on an incorrect estimation of her due date was not sufficiently egregious to constitute a violation of her substantive due process rights or the eighth amendment. Therefore, the prisoner could not recover money damages from the prison officials in their individual capacities. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Gittens v. Lefevre, 891 F.2d 38 (2nd Cir. 1989). An inmate brought a civil rights action against prison officials, alleging that the officials denied him an opportunity to make a statement challenging his administrative "keeplock" until the disciplinary hearing. The U.S. District Court dismissed the complaint, and the inmate appealed. The appeals court found that prison regulations governing administrative "keeplock" did not meet minimal due process standards, but the prison officials' reliance on those regulations in prohibiting the inmate from making a statement was reasonable, entitling the officials to qualified immunity in the inmate's civil rights action. According to the court, the state prison officials have a broad administrative and discretionary authority to remove the inmate from the general prison population for the purpose of ensuring the safety and security of the prison. Pending an investigation into an alleged disciplinary violation, such confinement is considered administrative and is not restricted by the fourteenth amendment, unless state law has created a liberty interest in remaining free from the restraints imposed. (Clinton Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Henry v. Perry, 866 F.2d 657 (3rd Cir. 1989). A prisoner brought a civil rights action against a prison guard arising out of the prison guard's use of deadly force in attempting to prevent the prisoner's escape. In his complaint, the plaintiff alleged that, while being returned to Pittsburgh from a track meet and upon arrival at Pittsburgh and believing the officers in charge of him including the defendant to be unarmed, he proceeded to effect an escape and that thereupon "Mr. Perry commenced to fire 5 or 6 shots at me without ordering me to stop or that he had a weapon and would shoot to kill." One of the shots wounded the plaintiff in the arm. He completed his escape but was subsequently recaptured. The U.S. District Court denied the prison guard's motion for summary judgment and the prison guard appealed. The court of appeals, reversing and remanding with directions, found that the prison guard was entitled to qualified immunity from liability.

The question in determining the existence of qualified immunity from liability in a civil rights action is whether a reasonable person could have believed the defendant's action to be lawful in light of clearly established law and information he possessed. The prison guard's use of deadly force in attempting to prevent the escape of a prisoner who had committed murder was applied in a good-faith effort to prevent the escape and did not violate the eighth amendment given that the guard gave the prisoner a verbal warning and fired warning shots in an effort to stop the escape. Therefore, the guard was entitled to qualified immunity from liability in the civil rights action brought by the prisoner. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Jackson v. Elrod, 881 F.2d 441 (7th Cir. 1989). A detainee in a county jail sued officials for damages resulting from the denial of his request to receive hardbound books directly from the publisher. The U.S. District Court denied the officials' motion for a summary judgment and the officials appealed. The appeals court found that an order denying the motion for a summary judgment on the grounds of qualified immunity was a final order for appeal purposes, and qualified immunity did not extend to the officials' prohibition against the detainee receiving hardcover books. The county prison officials were not entitled to qualified immunity when they barred the detainee from obtaining hardcover books which he had ordered directly from the publisher. The officer's interest in preventing the smuggling of contraband in hardcover books and the use of such books as weapons could have been accommodated by removing hard covers before turning over the books to the detainee. (Cook County Jail, Illinois)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Lanier v. Fair, 876 F.2d 243 (1st Cir. 1989). An inmate sued the Massachusetts Parole Board alleging that his due process rights were violated by his removal from a halfway house program and by the rescission of his previously established reserve parole date. The district court rendered a summary judgment for the defendants, and the inmate appealed. The appeals court found that the inmate established a liberty interest in remaining at the halfway house but the procedure he received following his transfer was adequate for due process purposes. Although the inmate established a liberty interest in his reserve parole date, the defendants were entitled to qualified immunity on that claim; and the Parole Board's decision to rescind the reserve parole date was based on sufficient evidence. (Massachusetts Department of Corrections)

U.S. District Court
QUALIFIED
IMMUNITY

Popham v. City of Talladega, 742 F.Supp. 1504 (N.D. Ala. 1989). A widow of a repeat prisoner who hung himself in jail brought an action against the jailers and city officials claiming a violation of the prisoner's constitutional rights. On the defendants' motion for summary judgment, the U.S. District Court found that the jail officials were entitled to qualified immunity in their individual capacities; even if the jailers violated state regulations, statutes or departmental procedure regarding jail staffing or observation of prisoners, the jailers' conduct did not constitute deliberate indifference to the prisoner's safety from self-harm and a reasonable officer in each of the jailers' positions could have believed that he was acting consistently with the constitution. The court also found that the city officials were entitled to qualified immunity in their official capacities, inasmuch as there was no evidence upon which to base a finding that any officials acted with deliberate indifference to the prisoner's taking of his own life or that there was any indifferent training, policy or custom which caused the prisoner's death. (Talladega Police Department, Alabama)

U.S. District Court
QUALIFIED
IMMUNITY

Rellergert v. Cape Girardeau County, Mo., 724 F.Supp. 662 (E.D. Mo. 1989). A civil rights action was brought against a sheriff and jailor following the suicide of an inmate. Following a judgment in favor of the plaintiffs, the defendants moved for a judgment notwithstanding the verdict. The district court granted the motion, and found that the sheriff and jailor were entitled to qualified immunity with respect to the civil rights action arising out of the suicide of the inmate, even though he stated on his medical history sheet that he had attempted suicide. They placed him in a common area where he could be kept under observation, where his normal conduct was unchanged since his prior incarceration a month earlier, and where he was observed going to the bathroom shortly before he hung himself. He had no sheet or bedding with him and it was unclear where the sheet with which he hung himself had been acquired. The court found that the defendants had taken reasonable steps to protect this inmate against suicide--in fact "they did everything they could" to protect the inmate from himself. "There were no facts to suggest the defendants had an evil intent or motive to allow" the inmate to harm himself "nor were the defendants callously indifferent to his needs. Rather, they took affirmative action to monitor him almost constantly." The mere fact that monitoring equipment had not also been installed in the bathroom did not constitute deliberate indifference. (Cape Girardeau Jail, Missouri)

U.S. District Court
QUALIFIED
IMMUNITY

Rucker v. Johnson, 724 F.Supp. 568 (N.D. Ill. 1989). A state prisoner brought a civil rights suit against various prison employees, challenging the disciplinary actions taken against him based on charges of marijuana use. On motions of the defendants for summary judgment, the district court found that the eleventh amendment prevented any award of damages against the defendants in their official capacities. The officials were qualifiedly immune from damages in their individual capacities in imposing discipline based on urinalysis reports even if the inmate could prove that the tests were not as reliable as it had been found in prior reported cases. Officials were qualifiedly immune despite the failure to furnish the inmate with the urinalysis reports, in that there was no reasonable probability that providing the report would have changed the outcome of the hearing, but the disciplinary committees ordinarily should provide copies of such reports to prisoners being charged with drug use. (Sheridan Correctional Center, Illinois)

U.S. District Court
LEGISLATIVE
IMMUNITY
QUALIFIED
IMMUNITY

Ryan v. Burlington County, N.J., 708 F.Supp. 623 (D. N.J. 1989). A pretrial detainee who was rendered quadriplegic as a result of an attack by a county jail inmate brought a civil rights action against the county board of chosen freeholders, and various jail personnel. On the defendants' motion for summary judgment, the district court granted the motion in part and denied the motion in part. It found that the warden and the jail captain who advised and assisted the warden were not entitled to qualified immunity, but the corrections officers were entitled to qualified immunity. Members of the county board of chosen freeholders were not entitled to absolute legislative immunity because the board knew that the county jail was overcrowded, and the board also was aware that no inmate classification system separating known dangerous inmates from others was in place at the jail. Moreover, the board could not reasonably have believed that its refusal to supply the county jail with additional security personnel was lawful.

The warden of the county jail was not entitled to qualified immunity from the pretrial detainee's civil rights claim, insofar as it was based on overcrowding. The jury could conclude that the warden neglected to attempt available solutions to overcrowding at the jail. The court also stated that the warden and the jail captain who advised and assisted the warden in setting procedures governing daily administration were not entitled to qualified immunity from the pretrial detainee's civil rights claim arising from the inmate assault, insofar as it was based on the failure to institute a classification system separating pretrial detainees from dangerous inmates. Neither official took any action whatsoever in an attempt to establish such a system of classification. Sergeants in the county jail were entitled to qualified immunity, insofar as it was based on overcrowding and the failure to institute a classification system separating pretrial detainees from dangerous inmates, in view of their lack of authority to remedy overcrowding or to institute a classification system. (Burlington County Jail, New Jersey)

U.S. District Court
QUALIFIED
IMMUNITY

Ryan Robles v. Otero de Ramos, 729 F.Supp. 920 (D.Puerto Rico 1989). An inmate's father brought a Section 1983 action against a prison guard, administrator, and supervisors to recover for the shooting death of an escaping inmate. The defendants moved for summary judgment. The district court granted the motion and found that using deadly force against a convicted, escaping inmate was not an unnecessary and wanton infliction of pain, did not violate the eighth amendment, and was within the guard's qualified immunity from Section 1983 liability. The guard tried to physically prevent the escape, and was prevented from doing so by the inmate's spear. He warned the inmate to desist, fired a warning shot, and fired the revolver after the inmate had jumped to the street outside the prison and started to run. The inmate's father failed to establish in the Section 1983 action that the training of guards and the use of firearms caused the death of the escaping inmate, that the policy on the use of deadly force deprived the inmate of constitutional rights, or that the administrator and supervisors were grossly negligent or deliberately indifferent. (Young Adults Institution, Miramar, Puerto Rico)

U.S. District Court
ELEVENTH
AMENDMENT
QUALIFIED
IMMUNITY

Smallwood v. Renfro, 708 F.Supp. 182 (N.D.Ill. 1989). A prisoner brought a suit against correctional facility officers for allegedly denying him medical treatment and using excessive force. The correctional officers moved for summary judgment. The district court found that the claims asserted against the defendants in their official capacities were barred by the eleventh amendment. The disputed issues of material fact precluded summary judgment on the prisoner's eighth amendment claim for deprivation of medical care and use of excessive force against the supervising officer. The chairman of the prison institutional board and the warden had no personal involvement in the alleged eighth amendment violations such as to render them potentially liable. The inferior officer who obeyed the superior's order not to take the prisoner to the hospital and the duty warden who deferred to the supervising officer's decision were entitled to qualified immunity. A genuine issue of fact as to whether the officer employed wanton and unnecessary excessive force precluded summary judgment in the officer's favor for an alleged incident in which he allegedly choked the prisoner and hit him with a radio while transferring the prisoner to a segregation unit. Neither the prison warden nor the prison institutional board chairman could have any personal responsibility for alleged eighth amendment violations of the prisoner's rights in allegedly denying him medical care or using excessive force, where neither was present during the events nor had any involvement in the violations themselves. Section 1983 could not render the warden personally liable simply because he supervised the alleged wrongdoers. (Joliet Correctional Center, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Smith v. Coughlin, 727 F.Supp. 834 (S.D.N.Y. 1989). A state prison inmate brought a civil rights suit against various prison and social service officials arising from the prison's investigation of charges by the inmate's daughter that the inmate abused her during a family visit and from the daughter's removal from the inmate's mother's home. According to the court, the alleged dissemination of information concerning child abuse accusations did not involve interests in which the plaintiff had a constitutionally protected privacy right. Prison officials enjoyed qualified

immunity from the allegation that the disseminated "confidential information" that the inmate had allegedly assaulted his daughters during the family visit, thereby forcing the inmate's placement in protective custody and resulting in termination of the inmate's prison employment and other privileges, since the inmate's asserted interest in having unfounded accusations kept confidential was not clearly established. The mere allegation that the officials damaged the inmate's reputation by allowing rumors of accusations against him to spread inside the prison did not establish constitutional deprivation. Child welfare workers enjoyed qualified immunity for their role in placing the prison inmate's daughters into foster care upon the receipt of allegations that the inmate had assaulted the daughter during a prison family visit, since actions workers took were within the scope of their duties. (Greenhaven Correctional Facility, New York)

U.S. District Court
QUALIFIED
IMMUNITY
RESPONDEAT
SUPERIOR

Vasquez v. Coughlin, 726 F.Supp. 466 (S.D.N.Y. 1989). An inmate brought a civil rights action against prison officials, claiming due process violations in connection with a disciplinary hearing. On cross motions for summary judgment, the district court found that fact issues concerning the hearing officer's failure to call a victim as a witness or to independently assess the credibility of confidential informant precluded summary judgment. The hearing officer was not entitled to qualified immunity; but the supervisory officers could not be held liable on the respondeat superior theory. Evidence that a hearing officer failed to call a victim at the inmate's disciplinary hearing arising from a stabbing incident without determining whether the victim would be available to testify at a later date raised a fact issue as to whether the officer intentionally violated the inmate's due process rights, precluding summary judgment in the inmate's civil rights action. The fact issue as to whether a hearing officer independently determined the credibility of a confidential informant or the reliability of the informant's information prior to the prison disciplinary hearing, as required by due process, precluded summary judgment in the civil rights action brought by the inmate subject to discipline. The right to an independent assessment of the confidential informant's credibility in the prison disciplinary proceedings was a matter of established law at the time of the 1986 disciplinary hearing, for purposes of determining whether the hearing officer was entitled to qualified immunity defense in the inmate's civil rights action. (Sing Sing Correctional Facility, Ossining, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Watson v. Norris, 729 F.Supp. 581 (M.D.Tenn. 1989). On the parties' objections to the report and recommendation of a U.S. Magistrate, denying summary judgment motions in a prisoner's civil rights action, the district court found that the Tennessee correctional institution deprived inmates in protective segregation of their constitutionally guaranteed right of access to courts by unreasonably limiting their access to prison law library materials and legal assistance. Though the inmates in segregation could be prohibited from physically attending the law library, they had to be given advance knowledge of what books and materials were available and relevant to their research, and the decision as to whether to respond to calls for assistance from the segregation unit rested in the sole discretion of "jailhouse lawyers." The court also found that the warden and other prison officials were entitled to a defense of qualified immunity; although the institution's arrangement for providing access to the prison law library materials and legal assistance was insufficient, there was no body of authority such that any reasonable officer should have known in advance that arrangement was unconstitutional. (Turney Industrial Center and Farm, Tennessee)

1990

U.S. Appeals Court
QUALIFIED
IMMUNITY

Allen v. Higgins, 902 F.2d 682 (8th Cir. 1990). An inmate filed a civil rights action against prison officials alleging 21 separate constitutional violations concerning treatment and conditions of confinement. The U.S. District Court awarded the inmate \$1 in damages on the claim involving a prison official's failure to allow the inmate to receive a government surplus catalog, and awarded the plaintiff's attorney \$19,927.64 in attorney fees. The defendant appealed. The court of appeals held that the prison official who did not examine the requested catalog before disallowing availability was not entitled to qualified immunity from damages, because he could not have reasonably assessed whether his conduct violated clearly established law. The court also ruled that an attorney fee award of nearly \$20,000 to an inmate who succeeded on a civil rights claim against only one of ten defendants and only one of 21 original claims, for a total damage award of only \$1, was excessive, and would be reduced to \$10,000; each of the eight claims dismissed either on the day of trial or at the close of evidence were unrelated to the claim on which the plaintiff ultimately prevailed and thus work on those unsuccessful and related claims could not be compensated. (Central Missouri Correctional Center)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Belcher v. Oliver, 898 F.2d 32 (4th Cir. 1990). A civil rights action was brought against the city, mayor, chief of police, and police officers, by the daughter of a pretrial detainee who committed suicide with a belt while detained at the city jail on charges of public intoxication and hazardous driving. Reversing and remanding the lower court decision, the U.S. Circuit Court of Appeals found that the general right of pretrial

detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies. The officers' failure to afford medical screening or attention to the detainee did not violate constitutional standards. There was an absence of evidence that indicated to the officers that the detainee posed a risk of suicide. It was also established that the failure of the police officers to remove the detainee's belt and shoelaces did not reach a level of "deliberate indifference," and therefore the officers were entitled to qualified immunity. (Clendenin City Jail, West Virginia)

U.S. District Court
QUALIFIED
IMMUNITY

Bony v. Brandenburg, 735 F.Supp. 913 (S.D. Ind. 1990). A prisoner sued prison officials, alleging cruel and unusual punishment in connection with the use of force to remove him from his cell after he refused to obey an order to come forward to be handcuffed. Evidence established that the officials acted properly and pursuant to governing regulations and standards, and there was no evidence of unnecessary and wanton infliction of pain. As a result, the defendants were entitled to qualified immunity. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
QUALIFIED
IMMUNITY

Burt v. Carlson, 752 F.Supp. 346 (C.D. Cal. 1990). An inmate brought a civil rights action against prison officials, alleging improper opening of legal mail. The district court found that the officials were entitled to qualified immunity. The restriction imposed by the prison authorities here with respect to legal mail is that legal mail must be marked "Special Mail-Open Only in The Presence of Inmate." Under qualified immunity, government officials are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. It was concluded that since the law was not clearly established at that time, they acted in a good faith belief that strict application of the regulation was lawful and were therefore entitled to qualified immunity. (United States Prison, Lompoc, California)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Deutsch v. Federal Bureau of Prisons, 737 F.Supp. 261 (S.D.N.Y. 1990). A prisoner filed a pro se action claiming that his constitutional rights under the eighth amendment were violated by being assigned to a cellmate who tested positive to HIV antibodies. The district court found that the prisoner failed to present the court with sufficient facts to allow inference that the decision to house him with the cellmate was a deliberate indifference to the prisoner's medical needs. The prisoner did not have a clearly established constitutional right to be informed of whether the assigned cellmate tested positive for HIV antibodies. The court also found that the federal prison officials were shielded from the prisoner's eighth amendment claim as a result of immunity under the Federal Tort Claims Act. The prisoner failed to allege any facts to support the finding that prison officials were either specifically aware that the cellmate might violate prison rules and engage in high-risk behavior or that they condoned or allowed the violation of these rules, and, thus no basis existed for concluding that prison officials violated the prisoner's clearly established constitutional rights.

It was noted by the court that behavior resulting in a high risk of transmission of AIDS, such as sexual behavior between inmates, was prohibited. The prison's policy included a provision for removing inmates testing positive from the general population when there is "reliable evidence that their conduct may pose a health risk to other inmates." (Federal Correctional Institute, Otisville, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Engel v. Wendl, 921 F.2d 148 (8th Cir. 1990). A disciplined inmate brought a Section 1983 action against prison officials. The U.S. District Court denied the officials' motion for summary judgment based upon qualified immunity, and appeal was taken. The court of appeals, affirming the decision, found that the prison officials, who had no evidence to support the disciplinary action taken against the inmate, were not entitled to qualified immunity to the inmate's subsequent Section 1983 action alleging violation of due process. Because the specific and clearly established "some evidence" standard was in place in 1987 when the due process violations occurred, reasonable officials would have known that such conduct violated the inmate's due process rights. (Iowa Men's Reformatory)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Greason v. Kemp, 891 F.2d 829 (11th Cir. 1990). The personal representatives of a Georgia prison inmate who committed suicide filed a civil rights action against prison officials who were responsible for his custody and those who provided his mental health care alleging deliberate indifference to his psychiatric needs. The U.S. District Court denied the defendant's motion for a summary judgment on the grounds of qualified immunity, and the defendants appealed. The appeals court affirmed the lower court decision finding that, at the time of the inmate's suicide, legal precedent clearly established that the eighth amendment protected inmates from deliberate indifference to psychiatric needs. The court also found that jury questions existed as to whether the conduct by both the mental health officials and the supervisory prison officials constituted deliberate indifference to the inmate's mental health needs, precluding a summary judgment on the issue of qualified immunity. Evidence created a question of fact as to whether the mental health center's psychiatrist provided grossly inadequate psychiatric

care to the inmate and that he realized he was doing so at the time precluding a summary judgment for the psychiatrist on the grounds of qualified immunity. After the first brief visit with the inmate, the director abruptly discontinued the inmate's antidepressant medication without reviewing the inmate's clinical file or conducting a mental status examination which would have revealed the inmate's extensive history of mental illness and numerous hospital admissions for psychiatric reason. It also contained reports stating that the inmate would pose a substantial suicide risk without the antidepressant medication. (Georgia Diagnostic and Classification Center)

U.S. Appeals Court
GOVERNMENTAL
IMMUNITY
QUALIFIED
IMMUNITY

Harrison v. Dahm, 911 F.2d 37 (8th Cir. 1990). An inmate brought a Section 1983 action after a prison disciplinary committee found him guilty of drug abuse and penalized him with room restriction and loss of good time. The U.S. District Court dismissed the action on grounds of governmental immunity, and the inmate appealed. The appeals court found that the law was not fully established that the conduct of the disciplinary committee in failing to give the inmate written notice of the test results prior to the disciplinary hearing, failing to provide him with a copy of the results or letting him view the evidence log at the hearing, and failing to administer a second, corroborative drug test, violated the inmate's right to due process. Thus, the members of the disciplinary committee were entitled to qualified immunity. An inmate is only entitled to advance written notice of an alleged disciplinary violation and is not entitled to written notice of drug test results. It was also found that some deference was due to the disciplinary committee's claims that actions in failing to provide a copy of the test results and refusing to allow view of the log were dictated by administrative necessity, and thus, the conduct did not violate the defendant's due process rights; and the single, uncorroborated drug test established some evidence of drug use sufficient to satisfy due process. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Hopkins v. Stice, 916 F.2d 1029 (5th Cir. 1990). A demoted Texas Department of Corrections employee brought an action against the department and a supervisor, alleging that his suspension, demotion, and probation deprived him of a property interest in his position and that the release of related information to the news media deprived him of a liberty interest in his reputation. The U.S. District Court dismissed the claims against the department and supervisor in his official capacity, entered judgment on jury verdict for the employee, and set aside the nominal damages and future lost earnings awards. Cross appeals were taken. The court of appeals found that the employee failed to overcome the supervisor's qualified immunity defense on the property interest claim. Public officials are immune from liability unless their conduct violated clearly established constitutional or statutory norm, which question is not necessarily answered by certainty of legal rule. The official enjoys qualified immunity if a reasonable official would be left uncertain of the application of the standard to the facts confronting him. It was also found that the employee failed to show a causal connection between the supervisor's conduct and injury to the employee's liberty interest. The employee produced no evidence that the supervisor published or caused the publication of the information leading to the investigation of the employee, precluding recovery on the employee's Section 1983 claim that release of the information deprived him of a liberty interest in his reputation; the supervisor had no authority over the person who improperly released the employee's name and recommended disciplinary action to the news media, and there was no evidence that the supervisor had any role in denying the employee a name-clearing hearing. (Texas Department of Corrections)

U.S. District Court
QUALIFIED
IMMUNITY

Kitt v. Ferguson, 750 F.Supp. 1014 (D.Neb. 1990), affirmed, 950 F.2d 725. Inmates at a medium security unit sued the Director of the Department of Correctional Services and the prison warden, claiming that conditions in the unit constituted cruel and unusual punishment. The U.S. District Court found that inmates sufficiently established an allegation which properly raised a legitimate question that their constitutional rights may have been violated by conditions at the unit, and that prison officials knew or should have known that their conduct may have violated such rights. Thus, officials were not entitled to a defense of qualified immunity. Conditions of confinement did not violate the inmate's constitutional rights under a totality of circumstances; however, problems with heating, plumbing, and ventilation systems needed to be addressed, and the presence of HIV positive inmates in the general prison population was also a cause for concern. (Nebraska State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Lee v. Dugger, 902 F.2d 822 (11th Cir. 1990). An inmate brought a civil rights action against a prison official, alleging that he was incarcerated longer than he should have been on a prior sentence because he was not credited with proper gain time. The U.S. District Court entered a summary judgment in favor of the official, and the inmate appealed. The appeals court found that the official was entitled to qualified immunity from the civil rights action brought by the former inmate who was allegedly not credited with proper gain time due to the official's misinterpretation of an amended gain-time statute, where only one decision by the intermediate appellate court had construed the new statute. (Per Curiam, with one Circuit Judge concurring specially.) (Florida State Prison)

U.S. District Court
QUALIFIED
IMMUNITY

McMillan v. Healey, 739 F.Supp. 153 (S.D.N.Y. 1990). A prisoner brought a civil rights action claiming violation of his due process rights by prison officials as a result of the failure to notify him of the range of disciplinary sanctions applicable to the misconduct with which the prisoner was charged. The district court found that the failure to notify the inmate, after he had been charged with misconduct, of the potential penalties that could be imposed for that misconduct violated the due process clause of the fourteenth amendment, and the prison officials were entitled to qualified immunity from liability for the violation of the prisoner's due process rights where the plaintiff's right to notice was not clearly established at the time the officials acted. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Molinelli v. Tucker, 901 F.2d 13 (2nd Cir. 1990). A prison guard who was required to undergo urinalysis testing brought a civil rights action against prison officials. The U.S. District Court denied the officials' motion to dismiss on grounds of qualified immunity, and the officials appealed. The appeals court, reversing and remanding, found that law was not "clearly established" at the time of the 1986 urinalysis that the urine testing was a search under the fourth amendment, entitling the prison officials to qualified immunity. (Sing Sing Correctional Facility, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Ospina v. Department of Corrections, State of Del., 749 F.Supp. 572 (D. Del. 1990). An arrestee brought a civil rights action against an arresting officer and correctional department personnel. On the defendants' motion to dismiss, the district court found that the defendants, in their official capacities, were immune from the suit. It was also found that the arresting officer accused of using excessive force was not entitled to qualified immunity from Section 1983 liability. The arrestee's right to freedom from excessive force in effecting an arrest was "clearly established" at the time of the challenged conduct, and a reasonable officer would not have believed that use of such force in face of no resistance was lawful. (Delaware Department of Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Powell v. Lennon, 914 F.2d 1459 (11th Cir. 1990). A federal inmate who was exposed to asbestos in a prison dormitory, and whose requests for a transfer to a dormitory without asbestos were refused, brought an action against correctional officials alleging intentional and negligent failure to warn of danger and provide adequate safety procedures, failure to comply with Clean Air Act, and violation of the inmate's constitutional rights under color of law. The U.S. District Court dismissed the inmate's complaint, and he appealed. The court of appeals found that the inmate's claim that he was forcibly exposed to asbestos sufficiently alleged a violation of the Eighth Amendment. According to the court, the inmate alleged that correctional officials forced him to remain in a dormitory when the atmosphere was filled with friable asbestos while knowing of the health danger and, even if the prison authorities merely acted negligently, their refusal to remove the inmate from the dormitory after being notified of the danger could constitute deliberate indifference to the inmate's serious medical needs. The federal corrections officials were not entitled to qualified immunity as the inmate informed the prison officials that exposure to friable asbestos threatened his life and health, and his demand to be placed in an asbestos-free environment constituted a serious medical need such that ignoring the inmate's request constituted deliberate indifference, even though the request to be placed in an asbestos-free environment was a request for preventive treatment. (Tallahassee Federal Correctional Institute, Florida)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Rogers v. Fair, 902 F.2d 140 (1st Cir. 1990). A state inmate brought a civil rights action against former officials of the state prison system alleging he was denied a prison furlough because his furlough sponsors were Jewish. The U.S. District Court partially denied the former officials a motion for summary judgment and qualified immunity, and the former officials appealed. The appeals court, reversing and remanding with directions, found that the former officials were entitled to qualified immunity from liability. The inmate presented no evidence that statements allegedly made about the religious background of the sponsors influenced the furlough decision. (Southeastern Correctional Facility, Massachusetts)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Russell v. Coughlin, 910 F.2d 75 (2nd Cir. 1990). A state inmate brought a civil rights action against prison officials alleging that he had been wrongfully restricted to his cell for ten days without receiving a notice of the charges against him and without receiving a hearing. The U.S. District Court denied the prison officials' summary judgment motion seeking qualified immunity, and the prison officials appealed. The appeals court, affirming and remanding, found that the prison officials were not entitled to qualified immunity from liability. Generally, the restrictive confinement of a state inmate imposed for administrative reasons does not implicate a liberty interest unless the state, by enacting certain statutory or regulatory measures, creates a liberty interest in remaining in the general prison population. (Sing Sing Correctional Facility, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Small v. Weekly, 749 F.Supp. 1052 (D. Colo. 1990). An inmate brought an action against corrections officers who allegedly failed to protect him from attack by another inmate. On the officers' motion for summary judgment, the U.S. District Court found that the corrections officers were entitled to qualified immunity with regard to the inmate's claim that they recklessly or deliberately disregarded the inmate's Eighth and Fourteenth Amendment rights when they failed to protect him from the attack, absent evidence that the officers knew or reasonably should have known that their actions in sphere of their official responsibility violated the inmate's rights or that they acted with malicious intention to cause deprivation of rights or other injury. (Centennial Correctional Facility, Canon City, Colorado)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Smith v. Marcantonio, 910 F.2d 500 (8th Cir. 1990). An inmate brought a Section 1983 claim against prison officials for injuries sustained when unknown inmates dumped scalding liquid on him. The U.S. District Court denied the defendants' motion for summary judgment based on qualified immunity, and the defendants appealed. The appeals court, reversing and remanding, found that the prison officials, who had no knowledge of the threat to the inmate, were entitled to qualified immunity. (Missouri State Penitentiary)

U.S. District Court
QUALIFIED
IMMUNITY

Tasker v. Moore, 738 F.Supp. 1005 (S.D. W.Va. 1990). Former inmates brought a Section 1983 action against the former Commissioner of the Department of Corrections, the former prison warden and the former Governor of West Virginia, alleging that a violation of their civil rights occurred when the Commissioner and the warden, upon orders of the Governor, refused to release them, in violation of court orders that they be released to cure unconstitutional overcrowding. On a variety of motions by the defendants seeking relief from the adverse jury verdict, the district court found that the Commissioner and the warden were not entitled to qualified immunity. The Governor was bound to respect and refrain from interfering with the implementation of orders requiring the release of inmates and his willful interference and refusal to comply with orders rendered him liable under Section 1983. The orders to release inmates did not violate the doctrine of separation of powers and, under the eighth and fourteenth amendments, created a liberty interest in inmates; but the punitive damage awards in the amount of \$100,000 in favor of each inmate against the Governor was excessive. According to the court, officials knew that prisoners had been ordered released and that further incarceration was a violation of clearly established constitutional rights. The Governor, having knowledge of the orders requiring the release of inmates to cure the unconstitutional overcrowding, was bound to respect and refrain from interfering with the implementation of those orders, even though the Governor was not a party to the orders or underlying action, and the Governor's willful interference and refusal to comply with orders rendered him liable to inmates under Section 1983. In ordering the Commissioner of the Department of Corrections and the prison warden to refrain from releasing the inmates, the Governor was in violation of the State court order requiring such release to cure the unconstitutional overcrowding, acted with reckless indifference to federally protected rights of inmates who were to be released, warranting the imposition of punitive damages in the inmates' Section 1983 action. (Huttonsville Correctional Center, West Virginia)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Tyler v. Barton, 901 F.2d 689 (8th Cir. 1990). A parolee brought an action against Nebraska correction facility officials claiming his constitutional rights suffered an invasion when, for drug testing purposes, the parole official and employees of a correctional center required the parolee to urinate in a bottle in the presence of a correction facility employee. The defendants moved for a summary judgment on qualified immunity grounds. The U.S. District Court denied the motion, and appeal was taken. The appeals court, reversing and remanding, found that a legitimate question existed as to whether the parolee possessed the right to be free from visual observation while furnishing a urine sample required as a condition of parole status, however, the correction facility officials did not violate any clearly established constitutional right in requiring the parolee to urinate in a bottle in the presence of a correction official and had qualified immunity from civil rights liability. (Omaha Correctional Center, Nebraska)

U.S. District Court
FAILURE TO
PROTECT
INJURY
SAFETY

Warren v. State of Mo., 754 F.Supp. 150 (W.D. Mo. 1990), affirmed, 995 F.2d 130. An inmate brought an action against prison officials for violation of the Eighth Amendment. On the officials' motions to dismiss, the U.S. District Court found that the allegation that the prisoner was required to work with a table saw that was known to be dangerous was sufficient to state a cause of action for violation of the prisoner's Eighth Amendment rights. The prison officials were not entitled to qualified immunity from liability to the inmate who claimed he was injured by the table saw which officials knew posed a serious risk of injury. The officials should have known that the alleged conduct violated a clearly established prohibition against reckless indifference to the prisoner's safety. The court also found that the prisoner, who was alleging a valid Eighth Amendment claim, could not also bring a separate, independent claim under Section 1983 for the same behavior based on substantive due process. (Missouri State Penitentiary)

U.S. District Court
QUALIFIED
IMMUNITY

Wetmore v. Gardner, 735 F.Supp. 974 (E.D.Wash. 1990). A state prisoner brought a suit against prison officials, challenging the policy of subjecting all prisoners transferred to the intensive management unit to an involuntary digital rectal probe for possible contraband, without a showing of probable cause that the prisoners were carrying contraband. The prison authorities moved for judgment notwithstanding a jury verdict in favor of the prisoner. The district court denied the motion and found that the prison officials had a burden of establishing that their practice was reasonably related to a legitimate penological goal. The prisoner had met the initial burden of showing that the practice was a deprivation of rights reaching constitutional magnitude; and prison officials were not entitled to qualified immunity. (Washington State Penitentiary)

1991

U.S. Appeals Court
QUALIFIED
IMMUNITY

Daugherty v. Campbell, 935 F.2d 780 (6th Cir. 1991), cert. denied, 112 S.Ct. 939. A prison visitor who was subjected to a visual body search before being permitted to visit her husband brought a civil rights action. The U.S. District Court denied the warden's motion for summary judgment, and the warden appealed. The court of appeals found that the warden was not entitled to qualified immunity; at the time of the incident, the search of prison visitors without at least reasonable suspicion that they carried contraband violated clearly established law. In this case, there was no probable cause or reasonable suspicion that the visitor possessed contraband. (Turney Center Correctional Facility, Tennessee)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Foster v. Basham, 932 F.2d 732 (8th Cir. 1991). Inmates sued a prison mailroom supervisor alleging that a mailroom policy of preventing inmates' access to telephone directory listings of attorneys sent to them was unconstitutional. The mailroom supervisor moved for summary judgment. The U.S. District Court concluded that the policy was unconstitutional but that the supervisor was entitled to qualified immunity, and the inmate appealed. The court of appeals agreed that the policy was unconstitutional. As the supervisor believed that the inmates had reasonable alternatives to acquiring names of attorneys, she was entitled to qualified immunity; however, the court found that having caseworkers supply inmates with a limited number of attorney names was not a reasonable alternative, particularly when the inmate might be suing the caseworker or his friends and associates. (Missouri State Penitentiary)

U.S. District Court
ABSOLUTE IMMUNITY

Harrington v. Grayson, 764 F.Supp. 464 (E.D. Mich. 1991). An inmate brought a Section 1983 action against a warden, alleging that, pursuant to the warden's instruction, the inmate was refused admission to the prison medical facility for a scheduled appointment concerning a foot problem on the grounds that he was not wearing state-issued shoes. On the warden's motion for summary judgment, the U.S. District Court found that the prison warden, who was sued in his individual capacity, was not entitled to absolute immunity under the Eleventh Amendment, even though he was acting in his official capacity when the alleged constitutional tort was committed. An Eleventh Amendment defense, the court held, was not available to state officials when plaintiffs sued them in their individual capacity. (Charles Egeler Correctional Facility, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Howell v. Evans, 922 F.2d 712 (11th Cir. 1991). The widow of a prison inmate, who died from a severe asthma attack, brought a civil rights suit against the prison superintendent, a medical official, and the private corporation which contracted to provide medical services to the prison. The U.S. District Court denied defense motions for summary judgments, and the defendants appealed. The court of appeals found that the widow failed to sufficiently allege that the physician's actions in treating the inmate amounted to "deliberate indifference" under legal or medical standards at the time of the incident, and thus, the physician was protected by qualified immunity. Even though the physician allegedly left the hospital when the inmate was receiving treatment for a serious illness and was unavailable during the day when needed, a physician who was substituting for the inmate's usual physician did know that the inmate suffered from a serious asthma condition and prescribed oxygen treatment and later a drug to alleviate the increasingly serious condition of the inmate. The alleged conduct by the superintendent was sufficient to satisfy the deliberate indifference standard, and thus, the superintendent was not protected by qualified immunity. The superintendent should have known that the inmate could not have been treated under the current conditions at the prison, but decided not to procure personnel necessary for proper treatment and allowed the "budgetary process" to determine whether the inmate would receive necessary treatment. In addition, the superintendent had received memoranda detailing the inadequacy of medical care and had supported the inmate's application for medical release, but, after the release was denied, did not seek treatment for the inmate at any other facility and did not attempt to obtain proper equipment. The court also found that the physician who had been hired by the private corporation, which contracted with the state to provide health care services at the

prison, was not the "final authority on matters of equipment and staff procurement at the prison." Thus, the private corporation could not be held liable for the death of the prison inmate, even though the physician had policymaking authority for the corporation, as the prison superintendent had the final authority on whether to procure staff and equipment necessary to treat the inmate's severe asthma. (Augusta Correctional and Medical Institution, Georgia Department of Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Jermosen v. Smith, 945 F.2d 547 (2nd Cir. 1991), cert. denied, 112 S.Ct. 1565. An inmate brought an action against prison officials alleging he was subjected to one week of keeplock without procedural protections guaranteed by the due process clause. The U.S. District Court entered judgment, granting in part and denying in part the plaintiff's motion for judgment, and appeal and cross appeal was taken. The court of appeals found that, at the time of the disciplinary hearing, procedural protections that apply to disciplinary proceedings had not been clearly established, and as prison officials did not violate the inmate's "clearly established" rights, they were entitled to assert a defense of qualified immunity. (Attica Correctional Facility, New York)

U.S. District Court
42 U.S.C.A.
Section 1983
ABSOLUTE IMMUNITY
JUDICIAL IMMUNITY

Loukas v. Hofbauer, 784 F.Supp. 377 (E.D. Mich. 1991). An inmate brought a civil rights action in connection with his classification to administrative segregation. On the defendants' motion to dismiss and for summary judgment, the district court found that the hearing officer in connection with the classification of the inmate was entitled to absolute judicial immunity from Section 1983 liability as it was not alleged that she was acting beyond the scope of her authority. It was also found that the prison officials involved were entitled to dismissal from the action absent evidence that they were personally involved in any of the alleged constitutional deprivation in connection with the classification of the inmate to administrative segregation; one official was merely alleged to have been aware of the inmate's constitutional rights, yet not to have acted to prevent any violation, and another official was alleged to have classified the inmate in administrative segregation pursuant to a notice of intent. (Michigan Department of Corrections)

State Court
IMMUNITY

McQueen v. Williams, 587 So.2d 918 (Miss. 1991). A son of a man who was one of two men murdered by two convicts during a burglary that took place after the two convicts escaped from a county jail where they were being held because of overcrowded conditions, sued the county sheriff for the wrongful death of his father. He claimed that the failure to prevent the escape or "promptly and adequately" inform the public of the dangerousness of the offenders constituted negligence. The complaint, seeking \$1.5 million in damages, claimed that the sheriff and his subordinates failed in a "ministerial duty" to keep the prisoners confined "by leaving the jail door unlocked" and thereby permitting an escape. The Mississippi Supreme Court upheld summary judgment for the defendant sheriff, noting that, under state law, the sheriff's duty to keep prisoners confined, if any, is discretionary in nature, requiring the sheriff's personal "deliberation, decision and individual judgment." The sheriff was entitled to qualified immunity from liability, in the absence of any evidence that the sheriff exceeded his authority or committed intentional wrongdoing. (Mississippi)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Marriott By and Through Marriott v. Smith, 931 F.2d 517 (8th Cir. 1991). A plaintiff brought suit under Section 1983 against a sheriff, county jailers, and the county and its commissioners, alleging that her Fourth Amendment rights were violated when she was searched at the jail after she visited an inmate. The court of appeals found that the prison visitor exception to the Fourth Amendment search warrant requirement did not apply to the search of a visitor who had already finished a visit to the jail and was no longer in a position to smuggle contraband into jail, and the defendants were not entitled to qualified immunity, since nothing in prior cases suggested that a jail visitor's Fourth Amendment right not to be searched without a warrant could be abridged after visit and after danger of smuggling had passed. (Morgan County Jail, Missouri)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Marsh v. Arn, 937 F.2d 1056 (6th Cir. 1991). An inmate at a women's prison who was attacked and severely beaten by a fellow inmate sued various prison officials. The U.S. District Court granted summary judgment for four of the defendants but denied judgment for a fifth defendant. Cross appeals were taken by the plaintiff and the fifth defendant. The court of appeals found that evidence was not sufficient to establish deliberate indifference on the part of any of the defendants, and thus all were entitled to qualified immunity. Although a cause of action for failure to protect an inmate from an attack by another inmate under the deliberate indifference standard of liability was established by the time of the assault on the inmate in 1985, the right of the inmate to be segregated due to threats of a roommate had not yet been sufficiently defined in the Sixth Circuit to be considered "clearly established" so as to defeat the prison official's qualified immunity defense. (Ohio Reformatory for Women)

- U.S. District Court
ABSOLUTE IMMUNITY Olds v. Hogg, 774 F.Supp. 1202 (E.D. Mo. 1991). An inmate brought a Section 1983 action against parole officers, alleging that they had made false statements in a parole prehearing report. On review of a magistrate's denial of motion to dismiss, the district court found that a state parole officer was entitled to absolute immunity from Section 1983 damages liability for his conduct in preparing a report to the parole board on the inmate's suitability for parole. (Missouri)
- U.S. Appeals Court
QUALIFIED
IMMUNITY Rellergert v. Cape Girardeau County, Mo., 924 F.2d 794 (8th Cir. 1991). A civil rights suit was brought against a sheriff and deputy, alleging that they violated the rights of an inmate who committed suicide. After a jury returned a verdict in favor of the plaintiff for \$75,000, the U.S. District Court granted judgment notwithstanding the verdict on the grounds that the defendants were entitled to qualified immunity; the plaintiff appealed. The court of appeals found that the defendants were entitled to qualified immunity because the measures taken by them to prevent the suicide of the inmate did not demonstrate deliberate indifference to his serious medical needs as a suicide risk. Pursuant to general policy, the inmate, who had indicated on a medical history form that he had attempted suicide in the past, was housed in a common area of the jail where he could be observed by a deputy from a centrally located booth; moreover, evidence that the deputy let the inmate out of his sight with a bed sheet when the deputy knew that the inmate was on a suicide watch supported a conclusion that the deputy acted imprudently, wrongly, or negligently, but not that the deputy acted with deliberate indifference. (Cape Girardeau County Jail, Missouri)
- U.S. Appeals Court
QUALIFIED
IMMUNITY Rodi v. Ventetuolo, 941 F.2d 22 (1st Cir. 1991). An inmate sued prison officials for an injunction, declaratory judgment, and money damages under Section 1983 alleging that the officials violated his rights to due process and equal protection by transferring him to administrative segregation without cause, notice or an opportunity to be heard. The prison officials moved to dismiss. The U.S. District Court dismissed the complaint for failure to state a claim, and the inmate appealed. The court of appeals found that prison officials were shielded by the doctrine of qualified immunity from the inmate's damage claims, where responsible prison officials at the time of the inmate's administrative segregation could reasonably have thought that prison rules did not create cognizable liberty interest triggering due process safeguards and, therefore, that noncompliance with procedures outlined in rules would not infract the prisoner's constitutional rights. (Adult Correctional Institution, Rhode Island State Penitentiary)
- U.S. District Court
QUALIFIED
IMMUNITY Russell v. Coughlin, 774 F.Supp. 189 (S.D.N.Y. 1991). A state prisoner brought a Section 1983 action against various prison officials. The district court found that the prison official presiding over the Tier III hearing, involving charges that the inmate assaulted another inmate, did not have qualified immunity with respect to his failure to assess the credibility of a confidential informant whose information provided the basis for the charges. It was clear at the time of the incident that the official was required to question the charging official who was relying upon the informant as to the credibility of the informant. (Green Haven Correctional Facility, New York)
- U.S. Appeals Court
QUALIFIED
IMMUNITY Scher v. Engelke, 943 F.2d 921 (8th Cir. 1991), cert. denied, 112 S.Ct. 1516. An inmate filed a civil rights action seeking damages for cruel and unusual punishment based on retaliatory searches of his cell. The U.S. District Court awarded the prisoner \$1 nominal damages and a jury verdict awarded the inmate \$1,000 punitive damages. The guard appealed. The court of appeals found the retaliatory search of the inmate's cell, ten times in nineteen days, and leaving the cell in disarray after three of those searches, could amount to cruel and unusual punishment under the Eighth Amendment, even if there was no physical abuse, injury or pain. The pattern of the searches showed "calculated harassment unrelated to prison needs," particularly since the defendant officer testified that he had no reason to believe that the inmate had contraband in his cell when he conducted the cell searches. The guard was not entitled to qualified immunity; although no court had previously held cell searches to amount to an Eighth Amendment violation, the unlawfulness of the retaliatory conduct was apparent. (Missouri Eastern Corr. Center)
- U.S. District Court
QUALIFIED
IMMUNITY Stone-El v. Fairman, 785 F.Supp. 711 (N.D. Ill. 1991). A prisoner brought a civil rights action against prison officials who opened his mail. On motion for summary judgment, the U.S. District Court found that although mail addressed to a judge and clerk of court was legal mail which could not be opened by prison officials, the officials were entitled to qualified immunity as there was no controlling law in the jurisdiction on the issue of whether privileged outgoing mail could be inspected for contraband. (Illinois Department of Corrections)
- U.S. Appeals Court
QUALIFIED
IMMUNITY Vaughan v. Ricketts, 950 F.2d 1464 (9th Cir. 1991). Prisoners brought a civil rights action against prison officials challenging rectal searches conducted at prison. The U.S. District Court denied the officials' motion for summary judgment on the issue of qualified immunity, and appeal was taken. The court of appeals affirmed. At trial, the district court entered judgment in favor of the officials, and the prisoners appealed. The court of

appeals found that the determination on prior appeal that no reasonable prison officer could have believed that rectal searches of inmates were conducted in a reasonable manner did not preclude a finding of qualified immunity at trial, where the inmates did not necessarily prove all of their allegations underlying their Fourth Amendment claim. If the jury concluded that prison officials thought they had sufficient cause to search, but that the officials were mistaken in that belief, it could find both a Fourth Amendment violation and qualified immunity. (Arizona State Prison)

1992

U.S. Appeals Court
QUALIFIED
IMMUNITY

Heflin v. Stewart County, Tenn., 958 F.2d 709 (6th Cir. 1992). The relatives of a pretrial detainee who hung himself in a jail cell sued the county, the sheriff, and a deputy alleging that the defendants' failure to cut the detainee down when he was discovered hanging in his cell was the proximate cause of the inmate's death and constituted deliberate indifference to his medical needs in violation of the Eighth Amendment. The U.S. District Court ordered judgment on jury verdict in favor of the plaintiffs, and the defendants appealed. The court of appeals found that a jury question was presented in the Section 1983 action as to whether the pretrial detainee died as the proximate result of the failure of the sheriff and deputy to take any steps to save the detainee's life when he was found hanging in a cell. The sheriff and deputy did not cut the detainee down but waited for medical personnel to arrive and photographs to be taken, even though the body was warm and the detainee's feet were touching the floor. A jury question was presented as to whether the county had a policy or custom requiring officers on the scene of a suicide attempt to leave an inmate found hanging while pictures are taken and until a medical examiner arrives so as to render the county liable. The court also found that the sheriff and deputy were not entitled to qualified immunity in the suit as the unlawfulness of not doing anything to attempt to save the detainee's life would have been apparent to reasonable officers in the defendants' positions in light of preexisting law. (Stewart County Jail, Tennessee)

U.S. District Court
QUALIFIED
IMMUNITY

Jensen v. Gunter, 807 F.Supp. 1463 (D.Neb. 1992). Nebraska inmates brought class actions under a federal civil rights statute, alleging that the practice of double celling violated the Eighth Amendment, and that the penitentiary's policy relating to the inmate liability for contraband in a double cell violated the Fourteenth Amendment's due process clause. The court found that the penitentiary officials were entitled to qualified immunity in their individual capacities as sufficient divergence existed among existing precedents to prevent a conclusion that officials should have known that the right to an adequate classification or screening system was clearly established. The Eleventh Amendment barred consideration of damages against them in their official capacities. (Nebraska State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Rich v. City of Mayfield Heights, 955 F.2d 1092 (6th Cir. 1992). Action was brought against police officers, paramedics, the city, and the police chief based on a pretrial detainee's attempt to hang himself. The U.S. District Court denied the summary judgment motion and the officers, city, and police chief appealed. The court of appeals found that the police officers were entitled to qualified immunity from liability. According to the court the defendant police officers reacted immediately by calling for the paramedics, and the paramedics arrived within minutes. The police officers did not intentionally deny or delay access to medical care, and there was no recognized constitutional right that would have required the officers to cut down the detainee themselves rather than call for medical assistance. (Mayfield Heights City Jail, Ohio)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Williams v. Anderson, 959 F.2d 1411 (7th Cir. 1992). An inmate who was given an injection of an antipsychotic drug against his will brought a Section 1983 action against the prison's staff psychiatrist who prescribed the drug, and the staff nurse who administered it. The U.S. District Court granted the defendants' motions for summary judgment, and the inmate appealed. The court of appeals found that the prison physician and the nurse were qualifiedly immune from the Section 1983 liability; in 1985, when the incident took place, it was not clearly established that their action violated due process or the Eighth Amendment. (Menard Correctional Center, Illinois)

1993

U.S. District Court
QUALIFIED
IMMUNITY

Brewer v. Seiter, 838 F.Supp. 340 (S.D. Ohio 1993). An inmate brought a Section 1983 civil rights action against a prison disciplinary board. The district court found that the prison disciplinary board violated the inmate's due process rights by failing to provide a contemporaneous written record indicating why they believed a confidential informant's testimony incriminating the inmate over other testimony. However, the prison officials who violated the inmate's due process rights were entitled to qualified immunity. A reasonable prison official would not have known at the time of the prison disciplinary action in 1986 that the requirement would be promulgated two years later. (Southern Ohio Correctional Facility)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Jones v. Coonce, 7 F.3d 1359 (8th Cir. 1993). Inmates placed in administrative segregation brought a Section 1983 action against prison officials, alleging a violation of their due process rights. The U.S. District Court entered partial summary judgment in favor of the inmates, and the officials appealed. The appeals court, affirming in part, reversing in part and remanding, found that thirty days was not a reasonable time for administrative segregation of inmates without an informal nonadversary hearing. Officials were not entitled to qualified immunity on the inmates' Section 1983 due process claims. In addition, prison officials' "walk-by" of a cell and telling the inmates placed in administrative segregation their status did not constitute an informal hearing for purposes of the inmates' Section 1983 action. (Missouri State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Latimore v. Johnson, 7 F.3d 709 (8th Cir. 1993). An inmate brought a Section 1983 action against a county attorney to recover for injuries caused by a prison attack after the attorney disclosed to the media that the inmate had agreed to testify against gang members in a murder case. The U.S. District Court denied the attorney's motion for summary judgment, and he appealed. The appeals court, reversing and remanding with direction, found that the attorney was entitled to qualified immunity because the attorney could not have known that his actions would violate such a right, and the nature of his position would not put him on notice of potential Section 1983 liability for his actions. (State Correctional Facility, Stillwater, Minnesota)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Mahers v. Harper, 12 F.3d 783 (8th Cir. 1993). An inmate brought a Section 1983 action against prison officials. The U.S. District Court denied the officials' motion for summary judgment, and they appealed. The appeals court, reversing and remanding with directions, found that the inmate's due process right not to be disciplined for a positive urine test for marijuana under a rule prohibiting possession of dangerous contraband was not clearly established at the time of the disciplinary proceedings and, thus, the officials were entitled to qualified immunity. (Iowa State Penitentiary)

U.S. District Court
LIABILITY
QUALIFIED
IMMUNITY

Newkirk v. Sheers, 834 F.Supp. 772 (E.D. Pa. 1993). Pretrial detainees brought a suit against a local government and prison officials in their official and individual capacities alleging violation of their constitutional rights. On cross motions for summary judgment, the district court found that the county prison warden and deputy warden did not have qualified immunity from liability for double-celling detainees in cells designed for one inmate and forcing detainees to sleep on mattresses on the cell floors for a period greater than a few days. Individual county employees did not enjoy qualified immunity from strip and body search claims. The law concerning the unconstitutionality of these searches without particularized reasonable suspicion was so clearly established by the time of the detainees' arrests that no reasonable officer could have believed that such conduct was constitutional. In addition, the county could be held liable based on its adoption of a policy permitting such strip searches. (Schuylkill County Prison, Pennsylvania)

U.S. District Court
ELEVENTH
AMENDMENT

Ruehman v. Village of Palos Park, 842 F.Supp. 1043 (N.D.Ill. 1993) affirmed 34 F.3d 525. Arrestees brought a civil rights action against a sheriff and cities. The district court found that the sheriff did not have Eleventh Amendment immunity. The sheriff's alleged failure to properly track warrants which are pending and those which have been recalled is not the enforcement of a state court arrest warrant to which Eleventh Amendment immunity would apply. (Cook County, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Wellmaker v. Dahill, 836 F.Supp. 1375 (N.D. Ohio 1993). An inmate brought a Section 1983 action against prison employees based on their enforcement of a prison rule restricting the length of inmates' hair. The prison employees filed a motion to dismiss or for summary judgment. The district court found that the decision by prison employees to enforce the prison rule restricting the length of inmates hair was not objectively unreasonable so as to deprive them of qualified immunity for the alleged Section 1983 violation. The Director of the Department of Rehabilitation and Correction had circulated a memorandum informing managing officers that a legal decision supported the department's decision to uniformly apply a policy requiring all inmates to receive haircuts, and that no exceptions were to be made. (State Correctional Institution, Mansfield, Ohio)

1994

U.S. Appeals Court
QUALIFIED
IMMUNITY

Allen v. Sakai, 48 F.3d 1082 (9th Cir. 1994). A prisoner filed a civil rights action under Section 1983 against prison officials. The prison officials moved for summary judgment under the theory of qualified immunity; this was denied by the U.S. District Court and the prison officials appealed. The appeals court found that the prison officials were not entitled to summary judgment on their claim of qualified immunity since the inmate made an adequate showing of actual injury to court access so as to show that the prison officials' conduct in denying the inmate photocopying services and use of a pen, if true, violated clearly established constitutional rights. The inmate was injured when his petition to court was refused since the inmate submitted only a single copy, regardless of the fact

that the inmate eventually had his petition duplicated and filed with the court. In addition, the prison officials' failure to provide the inmate with outdoor recreation when the officials had knowledge of the prison's goal to provide five hours of exercise per week precluded summary judgment for the prison officials on their claim of qualified immunity, even though the officials claimed that logistical problems made it difficult to provide adequate exercise. The inmate met both the objective and subjective elements of his Eighth Amendment claim as he alleged deprivation of a basic human need, and proved that for six weeks he was permitted out of his cell only weekly for exercise. (Halawa High Security Facility, Hawaii)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Belcher v. City of Foley, Ala., 30 F.3d 1390 (11th Cir. 1994). An arrestee's estate sued a city, the chief of police, and three police officers under Section 1983 and the Alabama wrongful death statute, after the arrestee committed suicide while in jail at the police station. The U.S. District Court denied the individual defendants' motions for summary judgment based on qualified immunity in their individual capacities and they appealed. The appeals court, reversing and remanding, found that the police chief's actions and inactions with respect to policies and training in handling of suicidal inmates did not constitute deliberate indifference, thus entitling the chief to qualified immunity. It was noted that a previous suicide in the jail occurred seven years before the arrestee's, and steps had been taken after that to prevent future suicides. The court also found that steps taken by the police officers to prevent the arrestee from committing suicide were not so inadequate as to constitute deliberate indifference, as required to overcome their assertions of qualified immunity. At the time the arrestee committed suicide, law did not clearly establish that police officers' actions in leaving the inmate unguarded in a cell with barred doors and a means to hang himself, when they knew that the inmate had attempted suicide, constituted deliberate indifference to the inmate's taking of his own life. Furthermore, the officers did take steps to prevent the inmate from committing suicide, including placing him in a stripped-down cell and checking on him every five minutes. (Foley Police Station, Alabama)

U.S. District Court
QUALIFIED
IMMUNITY

Brown v. Thompson, 868 F.Supp. 326 (S.D.Ga. 1994). An inmate brought a Section 1983 action against prison medical staff for deliberate indifference to his medical needs. On the defendants' motions for summary judgment, the district court found that the inmate's claim against medical staff for failing to provide a wheelchair was barred by their qualified immunity. (Coastal Correctional Institute, Georgia)

U.S. District Court
QUALIFIED
IMMUNITY

Delker v. Maass, 843 F.Supp. 1390 (D. Or. 1994). A state inmate brought a Section 1983 civil rights action against the chief medical officer of a state penitentiary based on a delay of almost two years in providing an operation for a nonincarcerated, inguinal hernia. The district court found that the inmate suffered some pain, anxiety, and restricted activity during the delay, although he may not have suffered long-term physical harm from it. The inmate alleged that the medical officer was fully aware of the inmate's injury and knew that the inmate was suffering pain and anxiety, that an operation would likely alleviate the inmate's symptoms, and that the inmate had repeatedly requested such an operation. The officer nonetheless refused to provide it because he adopted a de facto policy of not paying for such operations in order to reduce the cost of medical care for prisoners. The court found the officer was not entitled to qualified immunity, and ruled that the officer erred in establishing the de facto policy that surgery for simple hernias was never appropriate for an indigent inmate. Therefore, the officer was deliberately indifferent to the inmate's complaints of pain, restricted capacity, and anxiety. (Oregon State Penitentiary)

U.S. District Court
QUALIFIED
IMMUNITY

Galvan v. Carothers, 855 F.Supp. 285 (D.Alaska 1994). A female inmate who was placed on an all male wing of a prison brought an action against prison officials, alleging violations of her constitutional rights. The officials moved for summary judgment. The district court granted the motion, finding that Alaska regulations and prison policies did not give the inmate a liberty interest in her right to classification hearings for purposes of her procedural due process claim. Also, the female inmate's right not to be housed on the all male wing was not clearly established at the time of the alleged wrongful conduct by officials for purposes of qualified immunity. (Lemon Creek Correctional Center, Alaska)

U.S. District Court
QUALIFIED
IMMUNITY

Gavin v. McGinnis, 866 F.Supp. 1107 (N.D. Ill. 1994). A former state prisoner sued an assistant prison warden in a Section 1983 action, alleging he was deprived of civil rights when he was denied visitation with his sister. The district court denied the assistant warden's motion to dismiss. On its own reconsideration, the same court found that the prisoner had a liberty interest in visitation arising from an Illinois statute requiring correctional facilities to permit committed persons to receive visitors. However, the prisoner failed to state a cause of action under Section 1983 against the assistant warden, since the prisoner failed to sufficiently connect the alleged denial of visitation to the assistant warden. The assistant warden was protected by qualified immunity from the

suit as the existence of the statutorily created liberty interest in visitation in Illinois was not established at the time of the alleged denial. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
MUNICIPAL
IMMUNITY

Harrelson v. Elmore County, Ala., 859 F.Supp. 1465 (M.D. Ala. 1994). A paraplegic inmate brought an action against a city and county, alleging a violation of the Americans With Disabilities Act (ADA), Section 1983, constitutional rights, and a consent decree, and seeking compensatory and punitive damages, costs, and attorney fees. The defendants moved to dismiss the punitive damages claims. The district court found that cities and counties are immune from punitive damages under Section 1983. Also, punitive damages are not available to a plaintiff asserting a claim under the Americans With Disabilities Act (ADA) Title II, guaranteeing for qualified individuals with disabilities equal access to services and benefits provided by state and local governments. The court also ruled that an alleged violation of a consent decree cannot be the basis for the inmate's Section 1983 suit; the appropriate vehicle for enforcement of a consent decree is a contempt action brought before the court responsible for the decree. (Elmore County Jail, Alabama)

U.S. District Court
QUALIFIED
IMMUNITY

Jones v. Stine, 843 F.Supp. 1186 (W.D. Mich. 1994). A prisoner brought a civil rights action against a warden and deputy warden. The district court found that any Eighth Amendment right of a voluntarily segregated prisoner to physical exercise greater than that given, which included five hours of outdoor recreation per week in a fenced-in module, was not clearly established. Thus, the warden and deputy warden were shielded by qualified immunity from an award of damages and the prisoner was limited to injunctive relief. In addition, the defendants were entitled to qualified immunity from an award of civil damages on a First Amendment claim based on wrongful denial of the opportunity to participate in congregate religious services. Any right of protective custody inmates to participate in congregate religious services had not been clearly established. (Alger Maximum Correctional Facility, Munising, Michigan)

U.S. District Court
QUALIFIED
IMMUNITY

Kalasho v. Kapture, 868 F.Supp. 882 (E.D.Mich. 1994). A prisoner filed a Section 1983 action against a prison warden, alleging a prison policy directive banning bulk mail delivery of a catalog to the prisoner violated his First Amendment and due process rights. The warden moved for summary judgment. The district court found that the prison warden was entitled to qualified immunity from individual liability for money damages on the inmate's civil rights claim based on the prison policy, absent any binding precedent providing that the inmate's right to receive bulk mail was a clearly established constitutional right of which a reasonable person would have known. (Standish Maximum Corrections Facility, Michigan)

U.S. District Court
QUALIFIED
IMMUNITY

Kelly v. Fotj, 870 F.Supp. 126 (E.D.La. 1994). A sheriff was sued by a female arrestee for civil rights violations that allegedly occurred when the arrestee was strip-searched. Both parties moved for summary judgment. The district court found that the sheriff, who was sued by the arrestee for alleged civil rights violations that occurred when the arrestee was strip-searched following an arrest for a minor traffic infraction, was not entitled to qualified immunity where subjecting the arrestee to a strip-search was not objectively reasonable, despite the arrestee's lack of a picture identification that would have enabled police to check her criminal history. The arrestee's appearance and conduct at the time of the arrest and thereafter did not provide reasonable suspicion that the arrestee had possible contraband. (New Orleans Police Department, Louisiana)

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Malek v. Haun, 26 F.3d 1013 (10th Cir. 1994). An inmate brought a Section 1983 action against officials of the Utah Board of Pardons and Parole under the Fifth, Eighth and Fourteenth Amendments alleging that he was denied an opportunity to appeal a parole board decision. The U.S. District Court found that the officials were immune from liability and the inmate appealed. The appeals court, affirming the decision, found that a Utah statute granted the parole board complete discretion in making parole decisions once an offender was eligible. (Utah Board of Pardons)

U.S. Appeals Court
ABSOLUTE
IMMUNITY

Mitchell v. Kirk, 20 F.3d 936 (8th Cir. 1994) An inmate filed a pro se civil rights action against a state legislator. The U.S. District Court entered judgement against the inmate, and he appealed. The appeals court, affirming the decision, found that a state legislator's letter to prison officials to inquire about the state prison's operations and prisoner privileges was an appropriate legislative function. The legislator had absolute immunity from the suit by the inmate who allegedly lost his prison job as a result of the letter. (Missouri State Prison)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Mitchell v. Thompson, 18 F.3d 425 (7th Cir. 1994) U.S. cert. denied 115 S.Ct. 191. A demoted deputy brought an action against a county sheriff and the sheriff's chief deputy, alleging that he was demoted for refusing to support the sheriff's bid for reelection, in violation of various constitutional and statutory guarantees. The U.S. District Court denied the defendants' motion to dismiss, and the defendants appealed. The appeals

court, reversing and remanding with instructions, found that the defendants were entitled to qualified immunity from the deputy's claims. At the time of the deputy's demotion, law was not clearly established as to whether a sheriff could demote a deputy for political purposes. (Kankakee County, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Nix v. Evatt, 850 F.Supp. 455 (D.S.C. 1994). A prisoner sued various state prison officials under Section 1983, alleging violations of his procedural due process rights in a prison disciplinary hearing. On the officials' motions for summary judgments, the district court found that, at the time of his prison disciplinary hearing, a prisoner in administrative detention had a clearly established constitutional right to sufficiently competent representation, including the right to call witnesses and to receive help from a sufficiently competent inmate representative. Prison officials allegedly involved in depriving the prisoner of this right were not entitled to qualified immunity from the prisoner's Section 1983 claims. Officials who were not involved with the procedural due process claim were not liable. (South Carolina Department of Corrections)

U.S. District Court
QUALIFIED
IMMUNITY

Plumb v. Prinslow, 847 F.Supp. 1509 (D.Or. 1994). A former inmate brought an action against county and state officials allegedly responsible for the delay in his receiving credit against a sentence for time served in a county jail, resulting in his being wrongly imprisoned after the date on which he should have been released from custody. The district court found that there was a sufficient relationship between the act or omission of the county defendants to state a claim against them for violating the inmate's Eighth Amendment rights; however, the state defendants were entitled to qualified immunity. The sheriff did not establish the right to qualified immunity. The sheriff was aware of some complaints as to the system for processing credit for time served (CTS) certifications, and it was unclear what steps, if any, he took to correct these problems. In addition, he failed to explain why the inmate's CTS certificate was not timely furnished, either initially or upon the inmate's subsequent inquiries. (Marion County Sheriff's Department, Oregon)

U.S. District Court
QUALIFIED
IMMUNITY

Smith v. U.S., 850 F.Supp. 984 (M.D.Fla. 1994). Female inmates at a community treatment center brought an action against the federal government, a contractor that operated the center, the center manager, and the contractor's employee, alleging violation of equal protection and cruel and unusual punishment. The contractor and manager moved to dismiss. The district court found that the contractor was entitled to raise qualified immunity as a defense. The manager's motion was denied. (Orange County Community Treatment Center, Florida)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Sockwell v. Phelps, 20 F.3d 187 (5th Cir. 1994). Inmates filed a Section 1983 civil rights suit against former Louisiana prison officials alleging that the general policy of segregating two-person cells violated equal protection. The U.S. District Court found for the inmates and cross appeals were taken. The court of appeals found that the prison officials were not entitled to qualified immunity in light of the officials' knowing and intentional participation in the general policy of racial segregation despite an outstanding court order mandating full integration of the prison facility. (Louisiana State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Spear v. Sowders, 33 F.3d 576 (6th Cir. 1994). A prison visitor sued prison officials under Section 1983 alleging that a strip search and search of her car when she visited an inmate violated the Fourth Amendment. The U.S. District Court granted summary judgment to prison officials on the basis of qualified immunity and the prison visitor appealed. The appeals court, reversing and remanding, found that law was clearly established at the time of the search that prison officials needed reasonable suspicion to search prison visitors. The prison officials did not have reasonable suspicion to search the prison visitor based upon a confidential informant's tip that the inmate was receiving drugs "every time an unrelated female visited." Therefore, the officials did not have qualified immunity in the action. Furthermore, the prison officials' search of the visitor's car violated the Fourth Amendment, and the prison officials were not immune. (Northpoint Training Center, Kentucky)

U.S. District Court
QUALIFIED
IMMUNITY

Thompson v. Clarke, 848 F.Supp. 1452 (D.Neb. 1994). Prisoners sued prison officials, alleging that their constitutional rights were violated by the officials' refusal to allow them to use prison facilities for the production of taped programs for broadcast on a public access television channel for the purpose of promoting a particular religious belief. On the officials' motion for summary judgment, the district court found that the officials were entitled to qualified immunity respecting the claim. The law was not clear enough that a reasonable official would have understood the refusal to be a violation of constitutional rights. (Nebraska State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Walker v. Shansky, 28 F.3d 666 (7th Cir. 1994), affirmed, 51 F.3d 276. A state inmate brought an action against prison medical personnel and officials alleging that two forced injections of tranquilizing drugs violated his constitutional rights. The U.S. District Court entered summary judgment for the officials and the inmate appealed. The appeals court found that the medical personnel and officials were entitled to qualified immunity in the inmate's civil rights action alleging the injections violated his due process rights. The injections took place prior to the United States Supreme Court case establishing the process to which an inmate was constitutionally entitled before antipsychotic drugs could be administered. However, the

medical personnel and officials were not entitled to qualified immunity in the inmate's civil rights action alleging that the injections violated a prohibition against cruel and unusual punishment. At the time of the injections, it was clearly established that medical treatment of an inmate would amount to cruel and unusual punishment if the conduct demonstrated deliberate indifference to the inmate's condition and unnecessary and wanton infliction of pain. (Centralia Correctional Center, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Wilson v. Schomig, 863 F.Supp. 789 (N.D. Ill. 1994). A prisoner brought a civil rights action against prison officials based on alleged violations of the Eighth Amendment. The district court found that prison officials were not entitled to qualified immunity from the inmate's claim that they failed to clean up or allowed him to clean up human feces from his cell and a claim that the temperature in his cell fell below freezing during three days in January. (Stateville Correctional Center, Joliet, Illinois)

1995

U.S. District Court
ELEVENTH
AMENDMENT

Citrano v. Allen Correctional Center, 891 F.Supp. 312 (W.D.La. 1995). A civil rights case was filed in forma pauperis by pro se prisoners alleging that they were assaulted by prison officials while at a correctional facility operated by a private contractor (Wackenhut Corporation). The district court granted the defendants' motion to dismiss, finding that officials at a corrections facility operated by a private contractor were entitled to the same qualified immunity afforded to state prison officials, and that the facility was an arm of the state and was therefore immune from suit under the Eleventh Amendment. The court noted that the mere fact that the contractual ties of the private prison officers were different than that of state employees did not provide a logical basis for denying those workers the benefit of qualified immunity. The state legislature had indicated that private contracts for corrections are for the safety and welfare of the people of the state, as opposed to local interests; Eleventh Amendment immunity extends to state agencies that act as arms of the state, but does not extend to counties, cities or other political subdivisions of the state. In determining whether a suit against a state agency or similar agency is in fact a suit against a state, the court identified six factors that must be determined: (1) whether state statutes and case law characterize the agency as an arm of the state; (2) the source of funds for the entity; (3) the degree of local autonomy the entity enjoys; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. (Allen Correctional Center, Louisiana)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Green v. Bauvi, 46 F.3d 189 (2nd Cir. 1995). An inmate brought a Section 1983 action against prison officials alleging that a delay in a disciplinary hearing violated his due process rights. The U.S. District Court dismissed the complaint as to some defendants and subsequently granted summary judgment for the remaining defendants, and the inmate appealed. The appeals court, affirming the decision, found that although the allegations were sufficient to withstand a motion to dismiss for failure to state a claim, the lack of personal involvement of the prison officials in appointing the hearing officer justified summary judgment on the claim of undue delay in commencement of the hearing. The court found that it was objectively reasonable for the hearing officer to grant a one-day extension of the deadline for concluding the hearing to allow the inmate to obtain medical attention and to ensure that witnesses requested by the inmate could appear on his behalf, and therefore, the hearing officer was entitled to qualified immunity. It was also objectively reasonable for prison officials to believe that it was permissible for the inmate's hearing to commence within 14 days of his initial confinement and that a one-day delay in concluding the hearing would not violate due process. The officials were entitled to qualified immunity as a result. (Green Haven Correctional Facility, New York)

U.S. District Court
ABSOLUTE
IMMUNITY

Jermosen v. Coughlin, 878 F.Supp. 444 (N.D.N.Y. 1995). An inmate brought a Section 1983 action against prison officials alleging a violation of his due process and free speech rights in connection with a disciplinary proceeding. The officials moved for dismissal or summary judgment and the inmate filed discovery motions and requested the appointment of counsel. The district court found that the inmate was not entitled to assignment of counsel as the inmate had amply demonstrated the ability to competently litigate his claims, and no exceptional circumstances existed. The court also found that the appellate hearing officer was not entitled to absolute immunity. In contrast to the absolute immunity enjoyed by members of the judiciary, prison officials who hear cases in which inmates are charged with rules infractions enjoy a lower degree of protection as those officials cannot be said to be completely independent from the institution. (New York)

U.S. District Court
ABSOLUTE
IMMUNITY

Lewis v. Houston County Jail, 876 F.Supp. 861 (E.D. Tex. 1995). A prisoner brought a civil rights action arising out of his detention in a county jail and a claim of malicious prosecution. The defendants moved for summary judgment. The district court found that the prosecuting attorney had absolute immunity from malicious prosecution claims with respect to her decision to dismiss criminal charges against the detainee after he had spent nine months in the county jail, and her alleged warning that if she found him in the county again she would lock him up and throw away the key. The actions, or purported actions, took place within the scope of her prosecutorial duties. (Houston County Jail, Texas)

U.S. District Court
QUALIFIED
IMMUNITY

Maclean v. Secor, 876 F.Supp. 695 (E.D. Pa. 1995). An inmate brought an action against prison officials alleging his rights were violated when he was threatened and placed in administrative detention. On the officials' motion for summary judgment the district court found that although the inmate had protected liberty interest in a timely hearing, it was not clearly established at the time the inmate was placed in administrative detention, entitling officials to qualified immunity. (Federal Correctional Institution, Schuylkill, Pennsylvania)

U.S. District Court
QUASI-JUDICIAL
IMMUNITY

Malerba v. Selsky, 872 F.Supp. 1136 (N.D.N.Y. 1995). A civil rights action was brought against prison officials. The district court found that the person with the responsibility for hearing appeals of inmate disciplinary proceedings was not entitled to absolute quasi-judicial immunity in view of the large number of hearings which he must review and the fact that he was a designee of a state officer, that his decisions were unreviewed by that state officer so that they could be inconsistent, that there was no true adversarial process in the appeals, and that there was little opportunity to obtain a cure for any due process violations that might occur. (New York Prison)

U.S. Appeals Court
QUALIFIED
IMMUNITY

McCoy v. Webster, 47 F.3d 404 (11th Cir. 1995). An inmate who was beaten by other inmates after he was transferred into a cell block from a holding cell brought a suit against a sheriff and deputy sheriff, asserting a Section 1983 claim and various state tort claims. The U.S. District Court found that the deputy sheriff was not entitled to qualified immunity and denied his motion for summary judgment on all the claims. The sheriff was granted summary judgment on the Section 1983 claim, but his motion was denied as to the state law claims. Both the deputy and the sheriff appealed. The appeals court found that the deputy sheriff was entitled to qualified immunity from the inmate's Section 1983 claim that the deputy was deliberately indifferent to the inmate's personal safety when the deputy failed to communicate to an oncoming guard that he had placed the inmate in a holding cell because of a threat to his life. The deputy was acting within the scope of his discretionary authority, and he could reasonably believe that his failure to communicate the situation to the oncoming guard did not violate constitutional law. The court also found that it would decline to determine judgment as to nonfinal decisions of the district court concerning state tort claims. (Richmond County Jail, Georgia)

U.S. District Court
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY

Payne v. Axelrod, 871 F.Supp. 1551 (N.D.N.Y. 1995). A prisoner brought a civil rights action against the Department of Correctional Services (DOCS) commissioner, a prison superintendent, a hearing officer, and corrections officers. The district court found that prison officials serving as hearing officers are not absolutely immune but are protected by qualified immunity. The fact that the hearing officer was not an employee of the prison at which the hearing took place but was employed by the DOCS central office did not mean that he was sufficiently independent of prison authorities to merit absolute immunity. The court also found that an allegation that a corrections officer falsely accused the prisoner of weapons possession in retaliation for reporting another officer's alleged involvement in arson stated a claim under the civil rights statute, which was not subject to dismissal on the grounds of qualified immunity. (Great Meadow Correctional Facility, New York)

U.S. Appeals Court
PROSECUTORIAL
IMMUNITY

Pinaud v. County of Suffolk, 52 F.3d 1139 (2nd Cir. 1995). An arrestee brought a Section 1983 action against current and former district attorneys, alleging a violation of his civil rights in connection with his prior criminal prosecution. The U.S. District Court dismissed the action and the arrestee appealed. The appeals court found that the district attorneys' activities with respect to the arrestee's Section 1983 malicious prosecution claim as well as the claims relating to the arrestee's plea agreement and the presentations to the grand jury were covered by absolute prosecutorial immunity. However, since the handling of the prisoner after the complete conclusion of all criminal charges was not a prosecutorial task, but rather an administrative one, district attorneys who allegedly kept the prisoner in state custody for three weeks after the dismissal of all state charges against him were not entitled to absolute prosecutorial immunity for purposes of the prisoner's Section 1983 action, but rather were entitled only to the protection of qualified immunity for any involvement in the prisoner's seemingly delayed transfer back into federal custody after the dismissal of the state charges. (Suffolk County Jail, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995). An arrestee sued an officer for civil rights violations in connection with a beating he received from the officer while in detention. The district court found that a limited exception to the general rule of qualified immunity was justified for the officer who lost his temper and summarily beat the arrestee who was talking on the phone at the time of the attack. The police chief was entitled to qualified immunity on a claim of failure to supervise the arresting officer who beat the arrestee where there was only a bare assertion by an expert witness that the chief took inappropriate action with regard to supervision. (Andalusia Police Station, Alabama)

U.S. Appeals Court
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY

Tulloch v. Coughlin, 50 F.3d 114 (2nd Cir. 1995). An inmate brought a civil rights action against a prison disciplinary officer. The U.S. District Court dismissed the claims and the inmate appealed. The appeals court, reversing the decision, found that although absolute immunity is appropriate for judges in the exercise of their judicial function, the prison disciplinary officer serving pursuant to New York's inmate hearing officer program was

entitled to qualified, not absolute, immunity in the civil rights action brought by the inmate. (Attica Correctional Facility, New York)

1996

U.S. District Court
QUALIFIED IMMUNITY

Campo v. Keane, 913 F.Supp. 814 (S.D.N.Y. 1996). A prisoner filed a civil rights action against corrections staff and officials alleging violation of his procedural due process rights during a prison disciplinary hearing. The district court granted the defendants summary judgment, finding that the hearing officer did not violate the prisoner's rights by refusing to call a particular witness. The court found that it was reasonable for the hearing officer to believe that his questioning of two correctional officers regarding the credibility of confidential informants, rather than questioning the informants directly, was sufficient to satisfy his due process obligation and he was therefore protected by the doctrine of qualified immunity. The court noted that while prison officials must at some point explain their reasons for refusing to call a witness at a disciplinary hearing, the explanation need not be in writing and need not be detailed. The court also found that the prisoner failed to create a genuine issue of material fact regarding the alleged bias of the hearing officer. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED IMMUNITY

Caney v. Boardman, 91 F.3d 30 (7th Cir. 1996). A Muslim inmate filed a § 1983 action claiming that a female prison guard's participation in a strip search and daily observations of male inmates violated his right to privacy. The district court dismissed and the appeals court affirmed, finding that the defendants were entitled to qualified immunity against the inmate's First Amendment claims. The court noted that at the time of the events in question, it was not clear that a Muslim inmate's interest in observing religious nudity taboos outweighed a prison's interest in having guards observe prisoners at all times, and in providing equal employment opportunity to women. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
QUALIFIED IMMUNITY

Moorman v. Thalacker, 83 F.3d 970 (8th Cir. 1996). A prisoner filed a § 1983 action against prison officials, alleging a due process violation arising from discipline imposed for violation of prison regulations. The district court denied the defendants' request for qualified immunity and ruled in favor of the prisoner. The defendants appealed. The appeals court reversed the lower court decision, ruling that the discretionary transfer of the prisoner to a medium security prison was not a disruption exceeding the ordinary incidents of prison life and therefore did not implicate a due process liberty interest. The court also ruled that the prison officials were entitled to qualified immunity. The officials had found that the prisoner violated prison regulations when he had a conversation with a fellow prisoner about obtaining a handgun immediately upon the prisoner's imminent release; the prisoner's discipline included the loss of sixteen days of good time. (Iowa State Men's Reformatory)

U.S. District Court
ABSOLUTE IMMUNITY
QUALIFIED IMMUNITY

Quartararo v. Catterson, 917 F.Supp. 919 (E.D.N.Y. 1996). A prisoner filed a § 1983 action against various state corrections officials and current and past district attorneys and prosecuting attorneys. The prisoner alleged that his constitutional rights were violated when the defendants attempted to interfere with his participation in a work release program, and by a 14-day period of confinement in a Special Housing Unit (SHU) in connection with allegations that he had threatened the mother of a crime victim. The district court dismissed the claim concerning alleged due process violations associated with segregated confinement (SHU), finding that the conditions in SHU did not pose an "atypical and significant hardship in relation to ordinary incidents of prison life." The court found, however, that the prisoner's segregated confinement may be compensable in connection with his removal from the work release program without constitutionally sufficient procedures. The court found that the prisoner stated causes of action against the parole defendants and the Department of Correction defendants based on equal protection violations, but that parole commissioners had absolute immunity from liability. The prisoner alleged that officials had been motivated by bad faith and intended to injure him, and consequently accorded him treatment that was different from that of other parole applicants and participants in the work release program. The court also ruled that the district attorney and former prosecutor had absolute prosecutorial immunity in connection with communications to the parole board advocating against the prisoner's release on parole. However, the court found that those defendants did not have absolute immunity concerning their advocacy that the prisoner be removed from the work release program nor from their comments to the media. (Queensboro Correctional Facility, New York)

U.S. District Court
ABSOLUTE IMMUNITY
ELEVENTH AMEND-
MENT
QUASI-JUDICIAL
IMMUNITY

Reed v. Iranon, 940 F.Supp. 1523 (D.Hawai'i 1996). Former inmates brought an action against the state and members of its paroling authority alleging constitutional violations in connection with denial of cash and/or clothing upon their release. The district court found that members of the parole board enjoyed absolute quasi-judicial immunity regarding their administration of the state gate money statute, and that the state is immune from suit under the Eleventh Amendment. The court noted that parole board members have extensive discretion to determine a committed person's immediate needs and the level of gate money required. The court held that the inmates had no constitutionally protected property interest in receiving a gate money allowance, defeating a due process claim, even though the statute used the phrase "shall be furnished." The court also found that the inmates failed to demonstrate any violation of equal protection. The statute requires that certain inmates, upon discharge or parole, be furnished with up to \$200 and sufficient clothing.

(Corrections Division-Department of Public Safety and Housing, and Board of Paroling Authority, Hawaii)

U.S. District Court
INSURANCE

Webb v. Lawrence County, 950 F.Supp. 960 (D.S.D. 1996). A prisoner sued county correctional officials alleging civil rights violations under § 1983 and common-law negligence, seeking compensatory and punitive damages in connection with a sexual assault by another prisoner. The district court granted summary judgment for the defendants and dismissed the negligence and punitive damages claims. The court ruled that the incarceration of the plaintiff in the same cell as a prisoner who sexually assaulted him did not give rise to a cause of action against corrections officials under § 1983. The court found that the officials had no reason to be aware and were not in fact aware of an excessive risk to the plaintiff's health or safety, noting that the prisoner who committed the assault had assaulted no other prisoners while incarcerated nor had the plaintiff notified officials of his fear of his cellmate or of any assaults until he had been assaulted for four straight days. The court also found that under South Dakota law, the purchase of liability insurance by the county on behalf of prison officials did not waive the officials' statutory immunity from personal liability for negligence. (Lawrence County Jail, South Dakota)

U.S. District Court
REASONABLE BELIEF

Williams v. Greifinger, 918 F.Supp. 91 (S.D.N.Y. 1996) reversed 97 F.3d 699. An inmate who refused to submit to a tuberculosis (TB) test was segregated pursuant to a corrections policy. While segregated the inmate was denied opportunities to participate in any exercise activities outside of his cell. The inmate sued corrections officials, alleging that the policy was unconstitutional. The district court found that denial of all exercise opportunities while in segregation violated the inmate's rights, but that the defendants were entitled to qualified immunity. The court noted that the ability of the inmate to end his segregation by submitting to the TB test did not cure the Eighth Amendment violation inherent in his disciplinary confinement. The court also found that the defendants were deliberately indifferent to the inmate's serious medical needs for exercise. However, because it was reasonable for the defendants to believe that the challenged policy did not violate the inmate's rights at the time (1993), they were entitled to qualified immunity and summary judgment was granted in their favor. On appeal, the appeals court reversed with regard to qualified immunity, denying immunity to the official. (Ossining Correctional Facility, New York)

1997

U.S. Appeals Court
BIVENS CLAIM

Bagola v. Kindt, 131 F.3d 632 (7th Cir. 1997). A federal inmate whose arm was severed by a textile machine while he was working in a prison industry program brought a Bivens action against prison officials. The district court entered summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the inmate could bring a Bivens claim separate from any claim under workers' compensation but that the officials' failure to protect the inmate did not rise to the level of deliberate indifference. According to the court, it is not the injury itself that gives rise to a Bivens claim for violating the Eighth Amendment, but rather the court must scrutinize whether prison officials acted, or failed to act, with a sufficiently culpable state of mind to determine if the injury was the result of punishment or a tragic accident. The court found that the officials' conduct did not rise to a level of deliberate indifference where evidence indicated that the officials believed that safety violations were abated, did not receive any additional safety citations until after the accident, and continued to attempt to abate any risks associated with the inherently dangerous industrial setting. The officials had required the inmate to attend frequent safety meetings and to sign a job safety analysis. The inmate was working as a "card fixer" in the prison factory's Card and Spin Department, which produced wool blankets. (Federal Prison Industries, U.S. Penitentiary in Terre Haute, Indiana)

U.S. District Court
BIVENS CLAIMS
SOVEREIGN IMMUNITY

Johnstone v. U.S., 980 F.Supp. 148 (E.D.Pa. 1997). A former federal inmate filed a suit asserting a Bivens claim for denial of medical treatment and a claim for judicial review under the federal Inmate Accident Compensation Act. The district court dismissed the case in part, finding that the plaintiff's Bivens claims against the United States, Bureau of Prisons Industries, Inc., UNICOR, and the Department of Health Services of the Bureau of Prisons, were barred by sovereign immunity. The court also found that the complaint against corrections officers who gave the plaintiff a particular work assignment was time barred. The plaintiff alleged that he arrived at a federal facility with medical records that indicated he should be assigned to light duty work because of a heart condition, but he was assigned to a heavy-duty work assignment which led to groin injuries. (Federal Bureau of Prisons)

U.S. District Court
BIVENS CLAIM

Killingsworth v. Ondahl, 978 F.Supp. 1425 (D.Kan. 1997). An inmate brought a Bivens action alleging that prison officials were deliberately indifferent to his safety by placing him in a holding cell with a prisoner who had previously assaulted him. The district court granted summary judgment in favor of the officials, finding that the record did not show that the officials had information suggesting that the prisoner presented a threat to the inmate's safety. According to the court, it did not appear that the inmate notified officials of

his belief that they should be separated, and the inmate did not allege that the prisoner made any effort to harm him while they were celled together. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
ELEVENTH AMEND-
MENT
SOVEREIGN
IMMUNITY

Lancaster v. Monroe County, Ala., 116 F.3d 1419 (11th Cir. 1997). The administrator of the estate of a pretrial detainee who died due to an injury sustained while in custody at a county jail brought an action against the county, county commission, sheriff and jailers alleging constitutional violations. The district court granted summary judgment for the defendants and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the sheriff and jailers were not entitled to qualified immunity on the claim of deliberate indifference, but that the jailers were state officials and were thus immune under the Eleventh Amendment from suit in their official capacities. The appeals court held that the sheriff and jailers were immune under the doctrine of sovereign immunity from state law claims brought against them in their individual capacities. The detainee was a chronic alcoholic who, according to the court, died in custody because the sheriff and jailers delayed treatment despite their knowledge of his urgent medical condition. The court found that the sheriff's and jailers' conduct amounted to deliberate indifference under clearly established law at that time. (Monroe County Jail, Alabama)

U.S. District Court
QUALIFIED IMMUN.

Martinez v. Mathis, 970 F.Supp. 1047 (S.D.Ga. 1997). An arrestee who alleged he was physically assaulted because a jailer encouraged other inmates to beat him brought a § 1983 claim against the jailer. The district court held that the arrestee established a Fourteenth Amendment claim, but that the jailer was entitled to qualified immunity because it was not clearly established that prison officials violate the constitution when they make statements in the presence of inmates that a particular inmate is "sick" and "should have his ass beat." The arrestee was suspected of molesting a child and he was placed in a cell with other inmates. (Jeff Davis County Jail, Georgia)

U.S. District Court
BIVENS CLAIM

Puccini v. U.S., 978 F.Supp. 760 (N.D.Ill. 1997). A former inmate brought a Bivens action against federal prison officials alleging false imprisonment. The district court found that the individual defendants were entitled to qualified immunity and granted them summary judgment. The court also held that the former inmate could not maintain an action under the Federal Tort Claims Act because she did not complain of actions that were investigative or involved law enforcement officers. The court held that the former inmate's due process rights were not violated when she was held in federal custody after the expiration of her state sentence even though her federal sentence had also expired; the inmate had filed a petition and was released. The former inmate sought damages for the 147 days she spent in federal custody after both her state and federal sentences had expired. (Federal Bureau of Prisons)

U.S. District Court
ABSOLUTE IMMUN-
ITY

Taylor v. Sullivan, 980 F.Supp. 697 (S.D.N.Y. 1997). A parolee brought a civil rights action against a parole officer alleging that the officer filed a false report to intentionally harass him. Following a jury trial, the jury returned a verdict for the parolee and awarded damages in the amount of \$800. The district court granted the officer's motion for judgment as a matter of law, vacating the jury verdict and award. The court noted that the jury verdict was a compromise verdict that was subject to vacation, and that no evidence supported the particular claim on which the jury found liability. The court concluded that the jury had apparently been unable to agree on the issue of liability based on the evidence presented, and compromised by finding liability but imposing grossly inadequate damages. According to the court, the parole officer was entitled to absolute immunity for her conduct in obtaining a parole warrant and in filing a violation of release report. The court held that qualified immunity also would have applied. (Sing Sing Correctional Facility)

1998

U.S. District Court
QUALIFIED IMMUN.

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

- U.S. District Court
QUALIFIED IMMUNITY
ITY
- Anthony v. Burkhart, 28 F.Supp.2d 1239 (M.D.Fla. 1998). An inmate brought a § 1983 action against employees of a private, nonprofit corporation which operated correctional work programs for the Florida Department of Corrections (DOC), claiming he was denied an office position in a program and was terminated based on his race for utilizing the program's grievance procedure. The district court granted summary judgment for the employees, finding they were entitled to qualified immunity from liability. The court noted that the employees had no control over which inmates were assigned by the DOC to the factory, and that the inmate did not allege facts that contradicted the DOC's claim that he was terminated for unauthorized use of a copier. (PRIDE of Florida's furniture factory at Avon Park Correctional Institution, Florida)
- U.S. District Court
ABSOLUTE IMMUNITY
ITY
- Calvin v. Kansas Parole Bd., 993 F.Supp. 1366 (D.Kan. 1998). An inmate filed a § 1983 action against parole officials claiming that revocation of his parole was unconstitutional. The district court granted summary judgment for the officials, finding that the parole board was not a "person" for the purposes of § 1983. The court also found that members of the parole board were entitled to absolute immunity for actions taken in revoking the inmate's parole and that the parole officer was entitled to qualified immunity. The inmate had alleged that the officer had ordered his arrest on a parole violator warrant without probable cause, but the court found that this claim was controverted by the record, which included the inmate's admission of a violation. (Ellsworth Correctional Facility, Kansas)
- U.S. Appeals Court
BIVENS CLAIM
- Cronn v. Buffington, 150 F.3d 538 (5th Cir. 1998). A parolee brought a Bivens action against probation and parole officials and others. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the parolee's claim for damages for illegal confinement was cognizable given the grant of the parolee's habeas petition. The appeals court held that although the habeas court determined that the absence of a parole revocation hearing following the execution of the parole-violator's warrant unlawfully deprived the parolee of his due process right, the parole officials were entitled to qualified immunity. (U.S. Parole Commission)
- U.S. District Court
ELEVENTH
AMENDMENT
- DeGenova v. Sheriff of DuPage County, 18 F.Supp.2d 848 (N.D.Ill. 1998). An arrestee brought a § 1983 action against a county sheriff in his official capacity, alleging failure to provide care for his medical needs. The district court held that a county sheriff in Illinois is an independent constitutional officer when acting in a law enforcement capacity, and is therefore not protected by the Eleventh Amendment. (DuPage County, Illinois)
- U.S. Appeals Court
QUALIFIED IMMUNITY
ITY
- Greer v. Shoop, 141 F.3d 824 (8th Cir. 1998). The administrator of a decedent's estate brought a § 1983 action against state probation and parole officers, based on their failure to warn the decedent that a parolee placed into the decedent's home, who had been the decedent's boyfriend, was infected with the human immunodeficiency virus (HIV). The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the defendants were entitled to qualified immunity because the law was not clearly established at the time of the incident. (Third Judicial District Department of Correctional Services, Iowa)
- U.S. Appeals Court
ABSOLUTE IMMUNITY
- Hili v. Sciarrotta, 140 F.3d 210 (2nd Cir. 1998). A state prisoner brought a § 1983 action against employees of a probation department alleging that they submitted an inaccurate presentence report in connection with his conviction. The district court dismissed the case and the appeals court affirmed, finding that under New York law the employees were entitled to absolute immunity from suits for damages in connection with their preparation and submission of presentence reports. (Department of Probation, Nassau County, New York)
- U.S. District Court
GOVERNMENTAL
IMMUNITY
- Ludlam v. Coffee County, 993 F.Supp. 1421 (M.D.Ala. 1998). A pretrial detainee and her minor child brought a civil rights action against a sheriff and a county alleging constitutional violations arising from alleged failure to provide her with adequate medical treatment during her incarceration. The detainee was pregnant during her detention. The district court granted summary judgment for the defendants, finding that the detainee failed to establish the sheriff's supervisory liability for alleged indifference to her medical needs. According to the court, the sheriff was not shown to have been personally involved in the alleged deprivation of treatment for the detainee, the county jail's policy was to provide access to appropriate treatment for all inmates, and the sheriff never received a request from the detainee regarding medical attention and knew of no inmate who had ever been denied medical treatment. The court held that the county was not liable because, under Alabama law, the county had no role in operating, administering or overseeing the local jail, nor had the county ever received any notice that the detainee was denied medical treatment. The detainee alleged that the county failed to provide adequate treatment for her during her confinement, including failure to take her to an obstetrician/gynecologist as recommended by the jail physician. The detainee alleged that as the result of the county's inadequate treatment, her daughter, who was born four months after her release, experienced diminished weight, limited development, and excessive medical problems. (Coffee County Jail, Alabama)
- U.S. Appeals Court
QUALIFIED
IMMUNITY
- Newton v. Black, 133 F.3d 301 (5th Cir. 1998). A state prisoner who was beaten by another prisoner sued prison officials under § 1983 asserting claims for failure to protect, inadequate medical care, and negligence. The district court dismissed all claims except the negligence

claim against one official, on which it awarded a \$10,000 judgment. The appeals court affirmed in part and reversed and rendered in part, finding that the official was entitled to qualified immunity under Mississippi law. The court found that although the prison official was mistaken in his assessment of the seriousness of one prisoner's threat against another, this did not deprive him of qualified immunity. (Mississippi State Penitentiary)

U.S. Appeals Court
QUALIFIED IMMUN.

Stefanoff v. Hays County, Tex., 154 F.3d 523 (5th Cir. 1998). An inmate challenged denial of good time credits in a civil rights action. The district court denied summary judgment for the defendants. The appeals court dismissed in part and reversed in part. The appeals court held that the inmate had adequately alleged an equal protection violation because he was denied good time credit simply because he had been sentenced by a jury. The sheriff had determined that the jury decision more closely reflected the "conscience of the community" than a decision of an elected judge, which the appeals court found to be arbitrary and irrational. However, the court held that the sheriff had a legitimate basis for denying good time credit based on the inmate's disruptive activities. The inmate had also claimed that he was denied good time credit in retaliation for engaging in a hunger strike and corresponding with the media, in violation of his First Amendment rights. The court held that a prisoner's hunger strike may be protected by the First Amendment if it was intended to convey a particularized message. But the court found that the inmate's activities were sufficiently disruptive that the defendant had a legitimate penological interest in curtailing them, noting that the inmate had retained other reasonable and effective methods of communicating his views. The appeals court concluded that the sheriff was entitled to qualified immunity. (Hays County Jail, Texas)

U.S. Appeals Court
SOVEREIGN
IMMUNITY

Webb v. Lawrence County, 144 F.3d 1131 (8th Cir. 1998). A prisoner who was allegedly sexually assaulted by a cellmate brought an action against a county, sheriff, and sheriff department employees, asserting § 1983 and state-law negligence claims. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the prisoner failed to establish that the defendants actually knew of a substantial risk of harm to the prisoner from his cellmate. The appeals court also held that the defendants were protected by state statutory immunity on the prisoner's negligence claim. The court noted that while the defendants knew generally of the risk of inmate rape and assault for young, physically slight inmates such as the plaintiff, there was no evidence or allegations that inmate rape was common in this particular institution, nor was there evidence that the cellmate, who was a sexual offender, had assaulted other inmates or caused any other problems while incarcerated. Further, the prisoner had requested to be placed with the cellmate. (Lawrence County Jail, South Dakota)

U.S. Appeals Court
QUALIFIED IMMUN-
ITY
BIVENS CLAIMS

Wilson v. Blankenship, 163 F.3d 1284 (11th Cir. 1998). A federal pretrial detainee brought an action under § 1983 and Bivens claiming a federal marshal, wardens of a city jail and corrections officers subjected him to unconstitutional conditions of confinement in a city jail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the lack of a law library at the city jail did not prevent the detainee from pursuing civil rights claims or his criminal appeal to the extent that his right of access to courts was violated. The appeals court agreed that the wardens were entitled to qualified immunity because they did not have the authority or ability to provide the jail with a law library or exercise area; according to the court, their duty was to administer the jail pursuant to an agreement with the Marshals Service, which was aware of the lack of a law library and exercise space. The appeals court also affirmed the grant of qualified immunity to the marshal because he did not violate clearly established law by transporting the detainee to the city jail under the terms of an intergovernmental agreement. (Montgomery City Jail, Alabama)

1999

U.S. District Court
QUALIFIED IMMUN.

Baker v. Willett, 42 F.Supp.2d 192 (N.D.N.Y. 1999). A jail inmate brought an action against a county and county officials alleging excessive use of force in violation of § 1983. The district court denied, in part, the defendants' motion to dismiss, finding that a named sheriff's deputy was not entitled to qualified immunity because it was clearly established at the time of the incident that unnecessary and wanton infliction of pain constituted cruel and unusual punishment in violation of the Eighth Amendment. The deputy allegedly pushed the inmate in the back, causing him to fall off of a table and strike his head on metal bars approximately four or five feet from where he had been sitting. The inmate sustained a laceration on his forehead which required sutures. The county Undersheriff reviewed the incident and spoke to the inmate and the deputy, but did not conduct a formal investigation nor discipline the deputy. The district court dismissed the sheriff's department and county from the suit, finding that they could not be held liable on the ground that the sheriff's department had a practice of not investigating use of force complaints or disciplining officers. The court noted that three of five meritorious complaints in the past ten years had been directed toward one officer who had been terminated after disciplinary proceedings. (Warren Co. Jail, New York)

U.S. District Court
ABSOLUTE
IMMUNITY
QUASI-JUDICIAL
IMMUNITY

Montero v. Travis, 171 F.3d 757 (2nd Cir. 1999). A former parolee brought a pro se § 1983 action against parole board officials alleging that his parole was revoked in violation of his due process rights. The district court dismissed the complaint and the appeals court affirmed. The appeals court held that the parole board commissioner who presided over the parole revocation hearing was entitled to absolute immunity, notwithstanding the official's administrative

function, inasmuch as the commissioner was serving in a quasi-judicial function when he revoked the parolee's parole. The court also held that the claim against a second parole board official was frivolous given the failure to allege facts describing the official's personal involvement in the alleged constitutional violations. (Groveland Corr. Facility, New York)

U.S. District Court
QUALIFIED IMMUN.

Rapier v. Harris, 172 F.3d 999 (7th Cir. 1999). A pretrial detainee brought a § 1983 action against a sheriff, county jail employees and a police detective claiming constitutional violations during his detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that although it is permissible to punish a pretrial detainee for misconduct while in pretrial custody, that punishment can be imposed only after affording the detainee some sort of procedural protection. The defendants had kept the detainee in segregation as punishment for his conduct while confined, but he did not receive a written notice or a hearing, or any other process. His misconduct continued while he was in solitary confinement, resulting in a variety of interdepartmental reports and memoranda, and he remained there for 270 consecutive days. During this time his phone and commissary privileges were suspended for periods of time, he was denied writing materials, he received no access to recreational facilities, and he was denied showers and personal hygiene items. But the appeals court held that the detainee was not deprived of "anything necessary for his sustenance." The appeals court granted qualified immunity to the defendants, finding that the law was not sufficiently clear at the time to apprise the sheriff and employees that procedural safeguards were required. (Vigo County Jail, Indiana)

U.S. District Court
QUALIFIED IMMUN.

Weaver v. Tipton County, Tenn., 41 F.Supp.2d 779 (W.D.Tenn. 1999). The administratrix of the estate of a detainee who had died of alcohol withdrawal while in a county jail brought a § 1983 action against county officials alleging deliberate indifference to the deceased detainee's medical needs. The district court granted summary judgment, in part, in favor of the defendants. The district court held that the protections of the Eighth Amendment do not attach to pretrial detainees and that the Captain of the jail was not deliberately indifferent to the needs of the detainee by failing to act when he was left in a single-occupancy cell with no medical care. The court also held that jail supervisors were not liable for failure to supervise their subordinates. The court noted that the jail Captain had no contact with the detainee during his incarceration and knew nothing about the incarceration until after the detainee's death, and that the supervisors did not implicitly authorize, approve or acquiesce in their subordinates' failure to provide medical treatment to the detainee. According to the court, the jailers' failure to provide medical care to the detainee over the course of six days was not a pattern of unconstitutional conduct. The court cited hundreds of other instances in which other inmates received medical attention. But the court denied summary judgment for the sheriff and the county, finding that it was precluded by issues of fact as to whether their failure to ensure that adequate staffing, medical training, and supervision policies were in place and were enforced. (Tipton County Jail, Tennessee)

2000

U.S. District Court
ABSOLUTE
IMMUNITY
ELEVENTH
AMENDMENT

Adams v. Franklin, 111 F.Supp.2d 1255 (M.D.Ala. 2000). A county jail detainee brought a § 1983 action against county officials alleging he was denied medical treatment for two hours after he complained about symptoms manifesting an imminent heart attack. The district court found that the officials were not entitled to qualified immunity because the detainee's right to medical care was clearly established at the time of the violation. But the district court found that the Eleventh Amendment provided absolute immunity to sheriff department personnel in this § 1983 action because they were deemed to be executive officers of the state under state law. (Elmore County Jail, Alabama)

U.S. Appeals Court
ELEVENTH ADMEND-
MENT

DeGenova v. Sheriff of DuPage County, 209 F.3d 973 (7th Cir. 2000). An arrestee brought a § 1983 action against a sheriff in his official capacity alleging Fourth and Fourteenth Amendment violations. The district court denied the sheriff's motion to dismiss and the appeals court affirmed. The appeals court held that the sheriff was a county officer when he managed the jail, and was thus not entitled to Eleventh Amendment immunity. According to the court, under Illinois law the sheriff had final policymaking authority over jail operations, was designated as a county officer by the state constitution, and the sheriff was required as warden of the jail to notify the county board if he decided that the jail was insufficient to secure prisoners. The arrestee told arresting officers that he suffered from a serious cardiac condition that required medication but they did not provide him with medical treatment even though they saw him holding his chest. The arrestee did not receive his medication until his release the next day. (DuPage County Jail, Illinois)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Elwell v. Dobucki, 224 F.3d 638 (7th Cir. 2000). An applicant brought a § 1983 action alleging that a state correctional facility violated his equal protection rights by denying him the position of lieutenant because he was white. The district court entered summary judgment for the defendant and the appeals court affirmed. The appeals court held that the defendant warden was entitled to qualified immunity because it was not clearly established in 1992 that his alleged action would violate the applicant's equal protection rights. The warden allegedly departed from his usual policy of preferring in-house candidates in order to increase the number of African-American lieutenants in the facility. (Graham Correctional Facility, Illinois)

U.S. Appeals Court
SOVEREIGN
IMMUNITY
QUALIFIED
IMMUNITY

Jones v. City of Jackson, 203 F.3d 875 (5th Cir. 2000). A detainee sued a sheriff and deputy alleging they violated state laws by detaining him. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that, under Mississippi law, if a prisoner from one county is housed in a different county due to overcrowding, the former remains responsible for the prisoner's custody. The appeals court found that the sheriff and deputy were not entitled to qualified immunity for the alleged nine month detention of the detainee without proper process protections. But the appeals court found that the sheriff and deputy were entitled to sovereign immunity against the detainee's claim that they violated Mississippi law by detaining him, where they were acting within the scope and course of their employment. (Jackson City Jail, Mississippi)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Maurello v. U.S., 111 F.Supp.2d 475 (D.N.J. 2000). A prisoner brought a Federal Tort Claims Act action alleging that the federal Bureau of Prisons negligently delayed enrolling him in a statutory drug treatment program and caused his release to be delayed by 51 days. The district court granted summary judgment for the Bureau, finding that the delay was within the Act's false imprisonment exception. (Federal Bureau of Prisons)

U.S. District Court
QUALIFIED
IMMUNITY

Quartararo v. Hoy, 113 F.Supp.2d 405(E.D.N.Y. 2000). A prisoner brought a civil rights action against prison officials alleging violation of his due process rights when he was removed from a temporary work release program. The district court restored the prisoner to the program and held that the prisoner was entitled to compensatory damages for the loss of income and benefits attributable to his unlawful removal from the work release program, as well as emotional distress that he may have suffered. The court held that the officials' actions were not objectively reasonable and that they were not entitled to qualified immunity, noting that the officials failed to comply with their own regulations and failed to provide the prisoner any due process at all. According to the court, the prisoner established that he would not have been removed from the program if he had been afforded the due process to which he was entitled.(Queensboro Correctional Facility, New York)

2001

U.S. Appeals Court
BIVENS CLAIM
QUALIFIED
IMMUNITY

Benefield v. McDowall, 241 F.3d 1267 (10th Cir. 2001). A prison inmate brought a *Bivens* action against prison officials alleging that he had been exposed to a risk of harm at the hands of other inmates after an officer labeled him as a "snitch." The officer moved for dismissal on the basis of qualified immunity and the district court denied the motion. The appeals court affirmed, finding that it was clearly established at the time of the incident (1998) that labeling a prison inmate as a "snitch" to other inmates violated the inmate's Eighth Amendment rights. The appeals court held that the inmate stated an Eighth Amendment claim with his allegation that he had suffered psychological injury due to the fear of harm to which the officer exposed him, even though the inmate had not in fact been assaulted. (United States Penitentiary, Florence, Colorado)

U.S. Supreme Court
ELEVENTH AMEND-
MENT

Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001). A security officer for an Alabama state youth detention facility, and a nurse for an Alabama state university hospital brought separate lawsuits seeking monetary damages against their state employers under Title I of the Americans With Disabilities Act (ADA). The cases were consolidated on appeal. The federal appeals court upheld the right of the employees to pursue such claims, finding that Congress had validly abrogated the Eleventh Amendment immunity of the states from suits for damages when it enacted ADA. The U.S. Supreme Court reversed, finding that Congress exceeded its constitutional authority when it attempted to allow private individuals to seek money damages against the states for violations of ADA. The Court ruled that Congress failed to identify a "history and pattern of irrational employment discrimination by the States against the disabled." The Court stated that it would be "entirely rational and therefore constitutional for a state employer to conserve scarce financial resources by hiring employees who are able to use existing facilities," rather than having to make reasonable accommodations for disabled employees who are not able to easily use such facilities. (Alabama)

U.S. District Court
FEDERAL TORT
CLAIMS ACT
ABSOLUTE IMMUNITY

Brown v. McElroy, 160 F.Supp.2d 699 (S.D.N.Y. 2001). A prisoner brought an action against the Immigration and Naturalization Service (INS) and Public Health Service (PHS) alleging inadequate medical treatment and other complaints. The district court found that PHS officials were absolutely immune from liability on the claim of inadequate health care. The court found no constitutional violation from the alleged conditions of a cold room, no clean bed linens, toiletries, or clean clothing. (Buffalo Federal Detention Facility, Batavia, New York)

U.S. Supreme Court
BIVENS CLAIMS

Correctional Services Corp. v. Malesko, 534 U.S. 61 (2001). A federal prisoner diagnosed with a heart condition was transferred to a halfway house where he was to serve the remainder of his sentence, and was assigned to living quarters on the fifth floor. The company who operated the facility had a policy that required inmates residing below the sixth floor to use the staircase rather than the elevator to travel from the first-floor lobby to their rooms. Although the prisoner was exempted from this policy, he claimed that one of the company's employees forbade him to use the elevator to reach his fifth-floor bedroom, and that he then suffered a heart attack and fell after climbing the stairs. In addition to suing individual employees of the facility, he sought to impose liability on the company for alleged violation of his constitutional rights. The U.S. Supreme Court,

in a 5-4 decision, ruled that federal prisoners may not file civil rights claims against private corporations operating a halfway house under a contract with the Federal Bureau of Prisons (BOP). The Court declined to extend the implied damage remedy for violation of constitutional rights first recognized in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) to claims against private companies allegedly acting under color of federal law. The Court noted that federal prisoners' only remedy for an alleged constitutional deprivation lies against the individual officer, and not against the federal government itself. The Court concluded that it should not "impose asymmetrical liability costs on private prison facilities alone." If such a decision is to be made, the Court said, that is a "question for Congress, not us, to decide." (Le Marquis Community Correctional Center, New York)

U.S. District Court
ABSOLUTE
QUASI-JUDICIAL
IMMUNITY
QUALIFIED
IMMUNITY

Jones v. Lopez, 262 F.Supp.2d 701 (W.D.Tex. 2001). A prisoner brought a state court suit, alleging that his detention for 253 days beyond the term of his confinement violated his due process rights and constituted false imprisonment. The district court held that the defendants were not entitled to absolute or absolute quasi-judicial immunity from the prisoner's claims, nor were they entitled to qualified immunity. The court also held that the prisoner was falsely imprisoned, under state law, as it was undisputed that there was no valid order of confinement justifying the prisoner's prolonged confinement. (Bexar County, Texas)

U.S. District Court
QUALIFIED
IMMUNITY

Jones v. Puckett, 160 F.Supp.2d 1016 (W.D.Wis. 2001). A prisoner brought a § 1983 action against two corrections officials for violation of his Fourteenth Amendment rights in labeling him as a sex offender without due process. The district court granted summary judgment in favor of the defendants. The court held that the prisoner did not have a liberty interest in not being identified as a sex offender in prison records, noting that evaluation of the needs of prisoners was a normal prison procedure and such evaluations were not made a matter of public knowledge in such a way that would constitute a stigma. The court also found that the defendants were entitled to qualified immunity because, at the time of the prisoner's evaluation, no law held that an inmate had a Fourteenth Amendment liberty interest in not being so classified. (Oshkosh Corr'l Instit., Wisconsin)

U.S. District Court
ABSOLUTE IMMUNITY

Nicolas v. Rhode Island, 160 F.Supp.2d 229 (D.R.I. 2001). An inmate brought a § 1983 action against a parole board member, in her official and individual capacity, and a state, arising from the board member's question "Have you been practicing a lot of Voodoo and Black Magic?" during the inmate's parole hearing. The district court dismissed the case for failure to state a claim. The court noted that the board member, who was acting in her official capacity when she asked the question, was entitled to absolute immunity from § 1983 liability in her individual capacity. (Adult Correctional Institution, Cranston, Rhode Island)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Streit v. County of Los Angeles, 236 F.3d 552 (9th Cir. 2001). Detainees brought a § 1983 action against a county and sheriff's department seeking damages for overdetention. The district court denied the defendants' motion to dismiss and the appeals court affirmed. The appeals court held that the county would be subject to liability under § 1983 and that the sheriff's department was not entitled to Eleventh Amendment immunity because the department was not acting as an arm of the state when it administered county jails. Before an inmate is released from custody the sheriff's department conducts a check of a computerized database to confirm that the inmate is not wanted by any other law enforcement agency. But the department's policy requires this check to be run only after all wants and holds that arrive on a given day are entered into the database. Entering wants and holds can take up to two days, resulting in extended incarceration for inmates beyond their release date. (Los Angeles County Sheriff's Department, California)

U.S. District Court
QUALIFIED
IMMUNITY

Williams v. Goord, 142 F.Supp.2d 416 (S.D.N.Y. 2001). An inmate who was confined in segregation brought a § 1983 suit alleging constitutional violations and seeking declaratory relief, compensatory damages and punitive damages. The district court denied summary judgment for the defendants, finding that whether handcuff and waist chain restraints may have prevented the inmate from engaging in "meaningful exercise" for 28 days was a fact issue that needed to be resolved. The district court noted that a prisoner may be denied out-of-cell exercise under what is termed a "safety exception," but that a blanket policy denying such prisoners any opportunity for out-of-cell exercise could not be justified. The court found that lower ranking prison officers, who had no input into the development and implementation of restraint policies and believed they were following lawful orders, were entitled to qualified immunity. (Sullivan Correctional Facility, New York)

2002

U.S. Appeals Court
FTCA- Federal Tort
Claims Act
BIVENS CLAIMS

Alfrey v. U.S., 276 F.3d 557 (9th Cir. 2002). The personal representative of a federal prisoner who was killed by his cellmate brought Federal Tort Claims Act (FTCA) and *Bivens* actions against the government and corrections officials. The district court dismissed the *Bivens* claim and granted summary judgment for the defendants based on the discretionary-function exception to FTCA. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the plaintiff failed to state a *Bivens* claim and that the discretionary-function exception barred an FTCA claim based on the officers' response to the report of the cellmate's threat. But the appeals court found that federal correctional officers had a non-discretionary duty to perform a "Central Inmate Monitoring" evaluation of the prisoner, who was to be held at a federal facility pending trial

on a federal charge, before assigning the inmate to share a cell with a federal prisoner, precluding summary judgment on the FTCA claim. (Sheridan Federal Correctional Facility, Oregon)

U.S. District Court
QUALIFIED
IMMUNITY

Charles v. Verhagen, 220 F.Supp.2d 937 (W.D.Wis. 2002). A Muslim inmate sued prison officials alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court held that the defendants did not violate the Act by limiting inmate participation to one feast per year, but that they had violated the Act by prohibiting the possession of oil to be used for cleansing prior to prayer. The court found that the neither the feast limitation nor the oil prohibition violated the First Amendment. The court noted that the prohibition on the possession of oil imposed a substantial burden on the inmate's exercise of religion, and that there were less intrusive ways to accomplish the prison's objectives, such as requiring inmates to surrender secular objects when obtaining religious objects in order to stay under the overall property cap imposed by the prison. The court ruled that prison officials were entitled to qualified immunity from money damages because of the newness of the Act and lack of precedents interpreting it. (Oshkosh Corr. Inst., Wisconsin)

U.S. District Court
ELEVENTH AMEND-
MENT

Gerhardt v. Lazaroff, 221 F.Supp.2d 827 (S.D. Ohio 2002). State prisoners sued prison officials in three separate actions, alleging that each prisoner was denied the right to practice his religion due to unwarranted concerns about security, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the defendants' motion to dismiss the actions, finding that it was a proper exercise of Congressional power to require states that receive federal funds for prison activities or programs to comply with RLUIPA. The court held that the requirement did not violate the Establishment Clause, that the state was not immune under the Tenth Amendment, and that the state had waived its Eleventh Amendment immunity. The court noted that the requirement applied only to the receipt of federal funds after the effective date of the RLUIPA, and that the Act made it clear that states which continued to apply for federal funding for prison programs would be subject to the provisions of the Act. The court acknowledged the Act's provisions that allowed a prison's interest in safety and security to outweigh an inmate's claim for religious accommodation, if there was a sufficient nexus between that interest and the denial of the accommodation. The court found that the state waived its Eleventh Amendment immunity when it accepted federal funds after the effective date of the Act. (Ohio)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Kitchen v. Upshaw, 286 F.3d 179 (4th Cir. 2002). A former jail inmate brought a § 1983 action against a regional jail authority and jail officials, alleging violation of his due process rights when he was not allowed to participate in a work release program. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the authority was not an arm of the state and was therefore not protected by Eleventh Amendment immunity. But the court held that the inmate did not have a liberty interest under state law in participating in a work release program that was protected by the due process clause. (Riverside Regional Jail, Virginia)

U.S. District Court
QUALIFIED
IMMUNITY

Wares v. VanBebber, 231 F.Supp.2d 1120 (D.Kan. 2002). A state prisoner brought a pro se § 1983 action against a prison chaplain, alleging that the chaplain violated his First Amendment right to freely exercise his religion by intentionally interfering with the prisoner's ability to observe a religious holiday. The district court held that the prisoner's allegations stated a claim for violation of the Free Exercise Clause of the First Amendment and § 1983. The court held that the chaplain was not entitled to qualified immunity from liability in his personal capacity because the right of prisoners to reasonable opportunities to practice their religion was clearly established at the time. The prisoner alleged that the chaplain's intentional interference was motivated by his personal animus toward followers of the prisoner's religion. The prisoner had converted Orthodox Chassidic Judaism and had asked the chaplain for permission to eat his meals under a Sukka in observance of the Sukkot holiday. The chaplain allegedly refused to accommodate the prisoner's request and intentionally misled the prisoner and other Jewish inmates by suggesting that Torah law permitted inmates to observe Sukkot by wearing a napkin on their head. The chaplain apparently ignored state corrections department manuals and other information that described Sukkot requirements. (Hutchinson Correctional Facility, Kansas)

2003

U.S. District Court
SOVEREIGN
IMMUNITY

Bane v. Virginia Dept. of Corrections, 267 F.Supp.2d 514 (W.D.Va. 2003). An inmate brought action against a state corrections department and prison officials, stemming from injuries allegedly suffered while being handcuffed. The district court denied motions to dismiss and for summary judgment. The court found that the inmate properly stated a prima facie claim under the Rehabilitation Act by alleging that he suffered from a chronically unstable right shoulder and that he had been issued a "cuff-front" pass by the corrections department medical personnel. The pass required prison personnel to cuff the inmate with his hands in front to accommodate his injury, but prison officers failed to heed the cuff pass and handcuffed the inmate's arms behind his back. The court noted that acceptance of federal funds by the state corrections department was a waiver of its sovereign immunity from liability under the federal Rehabilitation Act. The court ordered further proceedings to determine if officers destroyed a posted medical order pertaining to the inmate, whether another officer stood by as an officer handcuffed the inmate in a manner contrary to the posted medical order, and whether the officers maliciously intended to cause harm to the inmate. (Wallens Ridge State Prison, Virginia)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Serrano v. Francis, 345 F.3d 1071 (9th Cir. 2003). A physically disabled black prison inmate appealed an order that granted summary judgment in favor of a correctional officer on claims that officials denied the inmate due process and equal protection by refusing to allow him to present live witness testimony during a prison disciplinary hearing. The appeals court affirmed in part and reversed in part. The appeals court held that the inmate's physical disability, coupled with his confinement in administrative segregation for nearly two months in a unit that was not designed for disabled persons, gave rise to a protected liberty interest under the Due Process Clause. The court noted that the inmate was denied use of a wheelchair which he had been allowed to use in the general population, allegedly could not take a proper shower, could not use the toilet without hoisting himself up by the seat, had to crawl into bed by his arms, could not participate in outdoor exercise in the yard, and was forced to drag himself around a vermin and cockroach-infested floor. The court held that a correctional officer violated the inmate's due process right to call witnesses in his defense during a disciplinary hearing, which implicated a protected liberty interest, because the officer offered no reason for refusing to allow live witness testimony on the inmate's behalf. But the court concluded that the correctional officer was entitled to qualified immunity because the "contours of the protected liberty interest" had not been determined with sufficient specificity so that the officer had fair warning that his levying of the punishment would deprive the inmate of his constitutional right to be free from an atypical and substantial prison hardship. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the white correctional officer's decision not to allow live witness testimony in the black prisoner's disciplinary hearing was racially motivated. (California Institute for Men, Chino, California)

U.S. District Court
SEC. 1983

Thomas v. City of Clanton, 285 F.Supp.2d 1275 (M.D.Ala. 2003). A detainee brought a § 1983 action alleging that he was subjected to an unconstitutional strip search, and that he had been subjected to sexual harassment while confined. The district court granted summary judgment in favor of the defendants. The court held that the strip search violated the detainee's Fourth Amendment rights, but that officials were not liable for the unwarranted strip search conducted by an officer. The court also held that a single complaint of sexual misconduct against an officer did not put the police department on notice of the need for increased supervision of the officer. The detainee was a passenger in a car in which marijuana was found, but the driver's wife had told the arresting officer that the marijuana belonged to the driver. There was no reasonable suspicion that the detainee was concealing a weapon, but he was subjected to a strip search anyway. The detainee had been taken to the police station where he was never booked, but was subjected to a strip search that was conducted in a bathroom. The detainee was then taken to the officer's home where the officer discussed oral sex. The detainee fled from the officer's home. The court noted that the officer's violation of the detainee's rights was deliberate, and that no amount of training would have prevented the violation. The court also noted that the police chief had attempted to investigate an earlier complaint of sexual misconduct lodged against the officer. (City of Clanton, Alabama)

2004

U.S. District Court
QUALIFIED
IMMUNITY

Allah v. Brown, 351 F.Supp.2d 278 (D.N.J. 2004). Inmates sued state prison officials, claiming that their policy of opening and inspecting their legal mail looking for contraband, especially anthrax, outside of their presence violated their First Amendment rights. The district court held that the policy violated the inmates' First Amendment rights but that the officials were entitled to qualified immunity from damages. According to the court, the risk of anthrax infection was minimal and was not reduced by the policy, except for the protection of the affected inmates, who were free to waive. The court granted qualified immunity to the officials due to uncertainties created by major terrorist attacks on September 11, 2001, finding that it would not be clear to a reasonable official that the policy violated the inmates' First Amendment rights. (East Jersey State Prison, New Jersey)

U.S. Appeals Court
QUALIFIED
IMMUNITY
PRECEDENT

Bahrapour v. Lampert, 356 F.3d 969 (9th Cir. 2004). A state prisoner sued prison officials under § 1983, challenging a prison regulation that prohibited prisoners from receiving certain types of publications. The district court granted summary judgment in favor of the prison officials and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The appeals court held that the state regulation that prohibited prisoners from receiving sexually explicit materials, and a regulation that prohibited the receipt of "role playing" materials, were related to legitimate penological interests and were not vague or overly broad. The appeals court found that state prison officials were entitled to qualified immunity on the prisoner's claim that a regulation prohibiting materials by bulk mail was unconstitutional. Although an appeals court established that the prohibition of commercial bulk mail was unconstitutional, the officials could not be expected to have known this at the time of the incidents. Officials had rejected the inmate's receipt of a Green Lantern comic book because it was delivered by bulk mail. The court noted that unpublished decisions may be considered in determining whether a constitutional right was clearly established at the time of a government official's alleged violation of the right. (Snake River Correctional Institution, Oregon)

U.S. District Court
INDIVIDUAL
CAPACITY

Broner v. Flynn, 311 F.Supp.2d 227 (D.Mass. 2004). A state prisoner brought a civil rights action against a county sheriff, alleging violation of his rights as the result of injuries he received during an assault by another prisoner. The district court granted summary judgment for the defendants. The court held that the prisoner failed to show that any acts or omissions by the sheriff in his individual capacity amounted to reckless or callous indifference to the prisoner's Eighth

Amendment rights. The court found that an officer, who had gone into the cell block to break up a prior fight between prisoners, was justified in not entering the cell block to break up the fight in which the prisoner was injured, because he feared that the responding officers would have been ambushed because of the location of the fight. (Worcester County Jail and House of Corrections, Massachusetts)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Davis v. Hall, 375 F.3d 703 (8th Cir. 2004). A former state inmate brought a § 1983 action against prison officials, alleging due process violations in connection with his prolonged incarceration after he was ordered released. The district court granted final judgment for the inmate and the officials appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that prison officials who failed to release the inmate for 57 days after a judge ordered the release deprived him of his Fourteenth Amendment right to be free from wrongful, prolonged incarceration. (Fulton Reception and Diagnostic Center, Missouri)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Johnson v. Unknown Dellatifa, 357 F.3d 539 (6th Cir. 2004). A pro se state prisoner brought separate § 1983 actions against various prison officials and staff. The district court dismissed the actions and the prisoner appealed. The appeals court consolidated the cases, and affirmed. The court held that the prisoner's § 1983 claims against a prison librarian, for allegedly failing to copy documents for his pending court case, was barred by the Eleventh Amendment. The court held that the prisoner's allegations of harassment by a corrections officer, if true, "demonstrated shameful and utterly unprofessional behavior" but did not violate the Eighth Amendment. (Marquette Branch Prison, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Luna v. Pico, 356 F.3d 481 (2nd Cir. 2004). A state prisoner brought a § 1983 action against hearing officers, alleging that they deprived him of due process in disciplinary proceedings. The district court denied cross-motions for summary judgment and the parties appealed. The appeals court reversed and remanded. The appeals court held that the hearing officers' determinations violated the prisoner's due process rights, but that the officers were entitled to qualified immunity because a reasonable officer would not have known that the evidence relied upon in finding the prisoner guilty of stabbing another prisoner (a misbehavior report and a letter from an inmate claiming to have been stabbed), was clearly insufficient. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
FTCA- Federal Tort
Claims Act

Montez Estate of Hearlson v. U.S., 359 F.3d 392 (6th Cir. 2004). The administratrix of the estate of a murdered federal inmate brought a negligence claim against the United States under the Federal Tort Claims Act (FTCA). The district court dismissed the case and the administratrix appealed. The appeals court affirmed. The appeals court held that the allegations in the complaint were insufficient to rebut the presumption that prison officials' decisions regarding the inmate's safety at the time of his death were of the type that could be said to be grounded in Bureau of Prisons (BOP) policy, and thus the FTCA's discretionary function exception shielded the United States from liability for the inmate's death. The court noted that applicable statutes and regulations gave the BOP discretion in deciding how to accomplish its stated objectives and to decide when disciplinary action is necessary. (Federal Medical Center, Lexington, Kentucky)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Palmer v. Richards, 364 F.3d 60 (2nd Cir. 2004). A state prisoner brought a pro se civil rights action under § 1983, alleging that an officer used excessive force to subdue him in an altercation that followed a pat frisk search. The prisoner also alleged that a superintendent violated his right to due process in the course of the resulting disciplinary hearing and grievance. The district court granted summary judgment, in part, for the defendants, and the superintendent appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner had a liberty interest not to be placed in administrative segregation. The appeals court held that the district court must develop a detailed record of the conditions of confinement in segregation compared to ordinary prison conditions to determine whether an atypical and significant hardship existed, when a prisoner is confined for an intermediate duration (between 101 and 305 days). The court noted that confinement longer than an intermediate duration, and under normal segregation conditions, is a sufficient departure from the ordinary incidents of prison life to require procedural due process protections. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Phiffer v. Columbia River Correctional Inst., 384 F.3d 791 (9th Cir. 2004). A state inmate filed an action alleging that the state's failure to accommodate his osteoarthritis and osteoporosis violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. After the United States Supreme Court vacated the appeals court decision, the case was remanded. On remand, the Appeals Court affirmed and remanded, finding that the state waived its Eleventh Amendment immunity under the Rehabilitation Act by accepting federal funds. (Columbia River Correctional Institution, Oregon)

U.S. District Court
ABSOLUTE IMMUNITY

Williams v. Consovoy, 333 F.Supp.2d 297 (D.N.J. 2004). A former state prisoner filed a § 1983 action against a psychologist and others, alleging that the decision to deny parole violated his constitutional rights. The district court held that the psychologist was entitled to absolute immunity from liability because his assessment of the parole candidate was an adjudicative act. The psychologist performed the evaluation on the order of the state parole board, to assist it in making its parole determination. (New Jersey State Parole Board)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Cochran v. Pinchak, 401 F.3d 184 (3rd Cir. 2005). A blind inmate filed an action alleging that state prison officials violated his rights under Title II of the Americans with Disabilities Act (ADA) by temporarily denying him access to talking books, a talking watch, a useable lock, and his walking cane. The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed. The appeals court held that ADA did not validly abrogate a state's immunity from claims for monetary damages brought by inmates under Title II of ADA. According to the court, Title II conflicted with the policy of giving prison officials wide latitude to create prison policies and anticipate security problems, and the state had a rational basis for regulating the inmate's access to a walking cane, talking book, and tape player. (East Jersey State Prison, New Jersey)

U.S. Appeals Court
ABSOLUTE
IMMUNITY
JUDICIAL IMMUNITY

Dawson v. Newman, 419 F.3d 656 (7th Cir. 2005). A former probationer brought a state court § 1983 action against a county superior court judge, county clerk of court, state corrections department and parole officials, alleging that his incarceration was wrongfully continued and he that he was wrongfully placed on parole supervision after his probation revocation was overturned on appeal. The district court dismissed the action and the probationer appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court could not dismiss claims against the clerk, who had not moved for dismissal. The court found that a county superior court judge's failure to transmit a release order to the state department of corrections for the probationer whose probation was improperly revoked, was a judicial act and was not administrative or ministerial in nature, entitling the judge to absolute judicial immunity. The court held that parole officials were not entitled to absolute judicial immunity because their acts did not involve acts analogous to those performed by judges, but involved performance of their day-to-day duties in supervising parolees. The court noted that absolute judicial immunity is not limited to government officials with the title of judge. (Indiana Department of Corrections, Madison County Superior Court)

U.S. District Court
QUALIFIED
IMMUNITY

DeToledo v. County of Suffolk, 379 F.Supp.2d 138 (D.Mass. 2005). A jail visitor who was arrested and briefly detained on an arrest warrant that was intended for another person, and a visitor who was arrested and strip searched on a warrant for her arrest that had been recalled, brought an action against correctional officers, a jail supervisor and the county. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the supervisor's negligent conduct in mistakenly ordering the arrest of the wrong person did not rise to the level of a due process violation that would support a claim under § 1983, where the supervisor made a reasonable assumption as to the warrant target's location in the visiting area and immediately rescinded the arrest when he was alerted to his mistake by another officer. The court found that a fact issue precluded summary judgment in favor of the supervisor for arresting the second visitor, noting that the supervisor had in his hands documents which, if read, would have revealed that the arrest warrant had been recalled. The court granted summary judgment to low-ranking correctional officers who conducted a strip search on the second visitor under then-existing policies that called for strip searches of prisoners. According to the court, reasonable officers in their positions would not have known that their actions would violate the Fourth Amendment. (South Bay House of Corrections, Suffolk County, Massachusetts)

U.S. District Court
QUALIFIED
IMMUNITY

Dunbar v. County of Saratoga, 358 F.Supp.2d 115 (N.D.N.Y. 2005). A female correctional officer at a county jail brought an action alleging sexual harassment in violation of Title VII and § 1983. The district court granted summary judgment for the defendants, in part, and denied in part. The court held that summary judgment was precluded on the officer's hostile environment sexual harassment claim. The officer alleged that co-workers made unwelcome sexual advances, directed graphic sexual comments and jokes at her, left sexual notes on her car, called her at home several times, and made obscene and offensive gestures toward her. The court held that the officer failed to establish that she was constructively discharged because of her gender in violation of Title VII, absent evidence that the defendants intentionally created an intolerable work atmosphere that forced the officer to quit voluntarily. The court found that the sheriff was entitled to qualified immunity under § 1983 from the officer's claims of sexual harassment, where the sheriff never sexually harassed the officer, never observed her alleged sexual harassment, never took any adverse employment action against her, and was never personally aware of allegations of sexual harassment. (Saratoga County Sheriff's Department, New York)

U.S. Appeals Court
QUASI-JUDICIAL
IMMUNITY
ABSOLUTE
IMMUNITY

Holmes v. Crosby, 418 F.3d 1256 (11th Cir. 2005). A parolee who had successfully defended parole violation charges brought a § 1983 action against a parole officer and individual parole board members, alleging false imprisonment and violation of his due process rights. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed and remanded. The court held that the defendants were entitled to absolute quasi-judicial immunity from liability because they were acting within the scope of their duties. (Georgia Board of Pardon and Paroles)

U.S. District Court
QUALIFIED
IMMUNITY

Littlejohn v. Moody, 381 F.Supp.2d 507 (E.D.Va. 2005). A federal prisoner brought a pro se action against prison officials, seeking injunctive relief and monetary damages. The inmate alleged violation of his constitutional rights when he was shocked by an electrical surge because a buffing machine that he was using did not have a ground-prong in its plug. The district court granted the defendants' motion to dismiss. The court held that one official did not know of a substantial risk of harm at the time the prisoner was shocked because he had sent the buffer to be repaired when it had shocked prisoners in the past, and he reasonably assumed that the machine was safe when it returned. Although the court found that allegations supported a deliberate indifference claim against a prison safety manager and electrical shop foreman, the court granted them qualified immunity because the right to be protected from a significant risk of injury was not clearly established at the time of the incident. (Federal Bureau of Prisons, Virginia)

U.S. District Court
SOVEREIGN
IMMUNITY

Mohamed v. Tattum, 380 F.Supp.2d 1214 (D.Kan. 2005). A federal prisoner brought a pro se civil rights action against a prison official, seeking monetary damages for injuries allegedly resulting from the official's failure to protect him from an attack by another inmate. The district court granted summary judgment in favor of the defendant. The court held that the official was not liable for deliberately failing to protect the prisoner, absent evidence that the official had notice or knowledge of a threat against the prisoner. The court excluded affidavits from other prisoners who stated that the prisoner had told them that he had delivered notes to the official informing him that his cellmate planned to injure him. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
QUALIFIED
IMMUNITY

Prison Legal News, Inc. v. Simmons, 401 F.Supp.2d 1181 (D.Kan. 2005). State prison inmates and a non-profit publisher of a periodical that discussed legal issues of interest to prisoners brought a § 1983 action against prison officials, challenging prison policies. The district court granted summary judgment in favor of the defendants and the plaintiffs appealed. The appeals court reversed. On remand, the district court held that any First Amendment right of prison inmates to receive gift publications was not "clearly established" in mid-2000, and therefore prison officials were entitled to qualified immunity against the inmates' § 1983 claims for damages. (Kansas Department of Corrections)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Purcell ex rel. Estate of Morgan v. Toombs County, 400 F.3d 1313 (11th Cir. 2005). The mother of a county jail inmate who died after he was beaten and injured by three other inmates brought a § 1983 action against a sheriff and jail administrator. The district court denied qualified immunity for the defendants, and Eleventh Amendment immunity for the sheriff, and they appealed. The appeals court reversed. The court held that the conditions at the county jail did not pose a "substantial risk of serious harm" as required to show an Eighth Amendment violation. The inmate was beaten by three other inmates in his cell over an alleged money dispute. Inmates were allowed to keep money in their cells, play cards and gamble, the jail had a history of inmate-on-inmate assaults, and the jail's layout presented some difficulty in the continuous observation of inmates. But the court noted that inmates were segregated based on particularized factors, including the kind of crime committed and personal conflicts, the jail was not understaffed at the time of the attack, serious inmate-on-inmate violence was not the norm, fights that did occur were not linked to any recurring specific cause, and jailers had a history of punishing inmate violence. At the time of the incident the jail held 118 inmates and was staffed at normal levels, having five officers on duty. The sheriff had directed that a new commissary system be instituted to manage inmate funds so that inmates would not have to keep money on their persons, but the system had not been put in place by the day of the incident. (Toombs County Jail, Georgia)

U.S. District Court
ELEVENTH AMEND-
MENT

Sasser v. Alabama Dept. of Corrections, 373 F.Supp.2d 1276 (M.D.Ala. 2005). A Caucasian state corrections employee brought an action against his employer alleging race discrimination, hostile work environment, and retaliation under Title VII, and claims for due process, equal protection and free speech under § 1983. The district court awarded summary judgment in favor of the employer. The employee had been suspended and reassigned to another unit after he made a racial slur to an inmate and assigned inmates to day labor based on their race. The court held that the employee was not similarly situated to an African-American co-worker who stated openly that she did not like "white people" or to an African-American co-worker who had breached security and also called the employee a "redneck," where there was no evidence that the co-workers had similar positions and responsibilities. The court noted that the alleged retaliatory acts were also not frequent or severe enough to create a racially hostile work environment under Title VII. The court ruled that the employee's § 1983 claims against the department alleging violations of his rights under the First and Fourteenth Amendments, and against a warden in his official capacity, were barred by the Eleventh Amendment. (Work Release Center, Alabama Department of Corrections)

U.S. District Court
QUALIFIED
IMMUNITY

Shaheed-Muhammad v. Dipaolo, 393 F.Supp.2d 80 (D.Mass. 2005). A prisoner brought a civil rights action against employees of a state corrections department alleging violation of his right to practice his Muslim religion. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the defendant failed to establish that the prisoner's religious beliefs were not sincerely held, noting that although the prisoner had a long history of pro se litigation, he might have been both litigious and religiously observant.

According to the court, the fact that the prisoner first sought a pork-free diet and four months later sought a vegetarian diet could have suggested an evolution of his beliefs, and not “backsliding” or nonobservance of religious tenets. The court concluded that the prisoner’s claim arising from confiscation of a newspaper, *The Five Percenter*, published by a Muslim organization was not barred by the exhaustion requirement of the Prison Litigation Reform Act (PLRA) because once the newspaper was deemed to be contraband and was confiscated, the confiscation became a non-grievable matter. The court denied qualified immunity for the officials who confiscated the newspaper, finding that it was well-established at the time of the confiscation that prisoners retain their First Amendment rights inside prison walls. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
QUALIFIED
IMMUNITY

Smith v. Haley, 401 F.Supp.2d 1240 (M.D.Ala. 2005). A former inmate brought a § 1983 action against prison officials, stemming from the alleged denial of his requests for religious accommodations for his practice of Odinism while he was incarcerated. Odinism is an ancient pre-Christian faith whose theology is based on historic Icelandic sagas and runic mysticism. The inmate had asked officials to allow him to light a small fire or light a candle, wear a Thor’s hammer necklace, and possess a small crystal. The district court granted summary judgment in favor of the officials. The court held that the inmate’s right to possess a crystal as part of his practice of Odinism was not clearly established by any law at the time of the actions at issue, and therefore the officials were entitled to qualified immunity from liability. The court noted that even if the refusal to allow the crystal violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) or the First Amendment, the contours of the inmate’s rights were not sufficiently clear at the time. (Limestone Correctional facility, Alabama)

U.S. District Court
QUALIFIED
IMMUNITY

Tardiff v. Knox County, 397 F.Supp.2d 115 (D.Me. 2005). A class action suit was brought against a county, its sheriff, and jail officers claiming that the Fourth Amendment rights of some detainees were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. The district court held that the county violated the Fourth Amendment by adopting a policy that allowed for strip searches of all detainees alleged to have committed felony offenses, although the sheriff was granted qualified immunity because the law on this matter was not clearly established at the time the policy was implemented. The policy provided for the strip-searching of all detainees alleged to have committed non-violent, non-weapon, non-drug felonies. The court found that the county and the sheriff were liable for a policy that called for the strip searches of detainees alleged to have committed misdemeanors, without reasonable suspicion. According to the court, the sheriff was responsible, in his individual capacity, for Fourth Amendment violations arising from strip searches of all detainees alleged to have committed misdemeanors without a showing of reasonable suspicion that they were harboring contraband on or within their bodies. The court found that the sheriff was aware of the custom of these universal strip searches and did not take effective action to halt the practice. The court noted that specific standards that described which strip searches may be undertaken in jails and prisons had been issued by the state attorney general. The state corrections department had conducted a review of the jail’s policy and procedure manual and informed the sheriff that the policy pertaining to body searches needed to be revised to comply with the attorney general’s rules for searches. (Knox County Jail, Maine)

U.S. District Court
SOVEREIGN
IMMUNITY

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court also held that there were genuine issues of material fact as to whether inmate abuse at the hands of prison officers occurred with sufficient regularity to demonstrate a history of widespread abuse at the prison, and as to whether the prison warden established customs and practices that resulted in deliberate indifference to violations of inmates’ constitutional rights. According to the court, it was clearly established at the time of the inmate’s death that the warden could face liability under § 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates. The court found that a prison inspector was not liable on a § 1983 supervisory liability claim, since the inspector was neither responsible for, nor had authority to prevent or correct problems relating to abusive officers. The court concluded that nurses were not liable under § 1983 where a nurse’s physical examination of the inmate following alleged abuse by officers during the extraction of the inmate from his cell revealed that the inmate suffered only minor injuries consistent with those seen by medical personnel in prisons following cell extractions. The court held that any delay in the nurse’s response to a call for immediate medical help for the inmate did not create or exacerbate injuries the inmate received from an alleged beating by prison officers, since the nurse arrived within minutes of receiving the call and officers were attending to the inmate’s medical needs by administering cardiopulmonary resuscitation. (Florida State Prison)

U.S. District Court
ELEVENTH AMEND-
MENT
QUALIFIED
IMMUNITY

Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). A former state prison inmate, proceeding pro se, brought a § 1983 action against corrections officials, alleging that their enforcement against him of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights. The court granted summary judgment for the officials. The court held that the inmate's claims for injunctive relief were moot and that the officials were entitled to Eleventh Amendment immunity insofar as the inmate's action sought monetary damages and was brought against the officials in their official capacities. The court found that the officials were entitled to qualified immunity because enforcement of the rules did not violate a clearly established constitutional right. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Clark-Murphy v. Foreback, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. District Court
SOVEREIGN
IMMUNITY
ELEVENTH AMEND-
MENT

Degrafinreid v. Ricks, 417 F.Supp.2d 403 (S.D.N.Y. 2006). A deaf inmate sued the superintendent of a state correctional facility and other officials, claiming violation of his constitutional and statutory rights when his hearing aid was confiscated during a search of his cell and then destroyed. The district court held that the inmate stated a claim for monetary damages against the state under the Americans with Disabilities Act (ADA), through allegations that constituted a showing of deliberate indifference to the inmate's medical condition in violation of the Eighth Amendment. The inmate claimed that officials destroyed his hearing aid during a search of his cell, knowing he was deaf, and delayed replacement for many weeks. According to the court, because the Rehabilitation Act (RA) was enacted pursuant to the Spending Clause of Article I, Congress can require states to waive their sovereign immunity as a condition of accepting federal funds. New York State's continued acceptance of funding, under the Rehabilitation Act, resulted in a waiver of sovereign immunity as to claims of the deaf prison inmate. (Upstate Correctional Facility, New York)

U.S. District Court
QUALIFIED
IMMUNITY

Felton v. Lincoln, 429 F.Supp.2d 226 (D.Mass. 2006). Federal prisoner brought civil rights action under § 1983 against jail officials, in their individual and official capacities, asserting claims for violations of his constitutional rights. The prisoner alleged that jail personnel wrongfully reviewed and confiscated material which was part of the discovery in his underlying criminal case and which had been sent to him by counsel, that he was wrongfully disciplined for possessing such material, and that there was wrongful interference with other incoming and outgoing mail, in violation of various regulations. The district court held that: (1) the temporary confiscation of the prisoner's legal materials did not violate his rights to due process and to meaningful access to courts, where the prisoner's counsel engaged in extensive discussions with prison personnel to make sure that the material was available for the prisoner's review in preparation for his trial, and the prisoner's defense was in no way impaired as a result of having the material temporarily confiscated; (2) the alleged wrongful disciplinary isolation imposed against the prisoner for possessing the legal material did not violate prisoner's right to due process; (3) officials' alleged failure to allow prisoner to be represented at disciplinary hearing did not amount to a violation of the prisoner's constitutional rights; (4) any wrongful interference with the prisoner's incoming and

outgoing mail, in violation of various regulations, was de minimis, and did not rise to level of a constitutional violation; (5) the sheriff had qualified immunity where the prisoner failed to show that the sheriff actually participated in acts that allegedly deprived prisoner of his constitutional rights, formulated a policy of tolerating such violations, or was deliberately indifferent; but (6) a genuine issue of material fact existed as to whether a prison director, captain, and deputy superintendent were personally involved in acts that allegedly deprived the prisoner of his constitutional rights, precluding summary judgment for those officials on basis of qualified immunity. (Plymouth County Correctional Facility, Massachusetts)

U.S. Appeals Court
ABSOLUTE
IMMUNITY

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006). A prisoner brought an action against prison officials and parole board members, alleging that she was illegally incarcerated in violation of § 1983, and asserting state law claims for false imprisonment and invasion of privacy. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the parole board members, parole agent, warden and correctional officers were entitled to absolute immunity. The court noted that parole board members had the authority under state law to make such decisions based on the prisoner's signed parole agreement, and the warden's and correctional officers' incarceration of the prisoner was based on a facially valid court order. (South Dakota State Penitentiary)

U.S. Appeals Court
QUASI-JUDICIAL
IMMUNITY

Hernandez v. Sheahan, 455 F.3d 772 (7th Cir. 2006). An arrestee brought a § 1983 action against a city and county sheriff's department, alleging that police and sheriff's deputies violated his Fourth and Fourteenth Amendment rights by refusing to entertain his claim that he was being held in custody due to mistaken identity. The district court granted summary judgment in favor of city, and entered judgment upon a jury verdict against the sheriff's department. The arrestee and sheriff's department appealed. The appeals court affirmed in part and reversed in part. The court held that the sheriff's department was not entitled to quasi-judicial immunity in the arrestee's § 1983 action, where units of government were not entitled to immunity in § 1983 actions, and the judge who arraigned the arrestee did not forbid the sheriff's department from conducting further inquiries into the arrestee's identity. The court found that the sheriff's department policy of ignoring an arrestee's claims of mistaken identity after an arrestee has appeared in court and a judge had ordered him held in custody did not violate the arrestee's right to due process, as required for the department to be liable under § 1983 to the arrestee. The detainee was held by the department for 13 days after his arraignment on a warrant that had been issued for someone else. The court noted that the judge did not abdicate responsibility to determine the arrestee's identity or delegate that responsibility to the department, and there was no doubt that the arrestee was the person that the judge ordered held at arraignment. (Cook County, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (W.D.Wis. 2006). A state prison inmate brought a § 1983 action against prison officials, challenging their refusal to permit him to organize an atheist study group. Following remand from the court of appeals, the officials moved for summary judgment. The district court held that it was not clearly established in 2002 that atheism was a "religion," and the officials were qualifiedly immune from suit. The court noted that the Free Exercise clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA) limit the government's ability to burden a prisoners' exercise of sincerely-held religious beliefs, even when governmental burdens are imposed neutrally upon believer and non-believer alike. The court noted that the courts had recognized that secular humanism and other non-theistic belief systems were protected by the Free Exercise Clause, but the inmate did not tell officials he was an adherent of any such belief system, and did not indicate that his proposed group was connected to "religious" principles. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
ELEVENTH AMEND-
MENT

Madison v. Riter, 411 F.Supp.2d 645 (W.D.Va. 2006). A state prisoner brought an action against prison officials and others under the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging the denial of his requests for kosher meals. The district court found that the applicable RLUIPA section increasing the level of protection of prisoners' religious rights violated the Establishment Clause and the prisoner appealed. The court of appeals reversed and remanded. On remand, the defendants brought a motion to dismiss which was dismissed by the court. The district court held that RLUIPA was a valid exercise of Congress' Spending Clause authority and that Congress' use of its Spending Clause authority was in pursuit of "the general Welfare." The court held that the RLUIPA conditions were related to federal interests and that conditioning the award of federal corrections funds on a state's compliance with RLUIPA was not coercive. According to the court, the federal corrections funding conditions imposed upon states through RLUIPA did not violate the 10th Amendment and the state waived its 11th Amendment immunity to the prisoner's claims for damages under RLUIPA. (Bland Correction Center, Virginia)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Madison v. Virginia, 474 F.3d 118 (4th Cir. 2006). A state prisoner brought an action against the Commonwealth of Virginia, prison officials, and others under the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging the denial of his request for kosher meals. The district court denied the defendants' motion to dismiss all claims and the state appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that RLUIPA is a

valid exercise of Congress' spending power, such that Virginia could not avoid the RLUIPA protections of inmates' religious liberty. According to the court, the restrictions under RLUIPA against the States' imposition of substantial burdens on the religious liberty of the inmates did not impose an unconstitutional condition in violation of Spending Clauses, as RLUIPA did not induce the States to engage in unconstitutional activities. The court found that RLUIPA was not unconstitutionally coercive, in violation of Spending Clause restrictions, because it conditioned all federal funding for Virginia state prisons on the compliance with its ban on substantial state restrictions on religious liberty of inmates. The court also held that the state's waiver of Eleventh Amendment immunity did not extend to suits for monetary damages. (Greenville Correctional Center and Bland Correction Center, Virginia)

U.S. District Court
QUALIFIED
IMMUNITY

Meyer v. Teslik, 411 F.Supp.2d 983 (W.D.Wis. 2006). A state prison inmate sued a chaplain, claiming that the omission of his name from a list of those allowed to attend Native American religious ceremonies violated his rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The chaplain moved for summary judgment. The district court held that the inmate's exercise of his Native American religion was "substantially burdened," for the purpose of determining whether RLUIPA was violated when, over a three-month period, the prison chaplain did not include him on the list of inmates allowed to attend religious services when there was no compelling reason for omission. The court found that summary judgment was precluded by material issues of fact as to whether the chaplain deliberately left the inmate's name off the list, resulting in a denial of his First Amendment right to exercise his core beliefs by participating in pipe and drum ceremonies. The court held that the chaplain was not entitled to qualified immunity from liability for violating First Amendment and RLUIPA rights of the inmate where the right of the inmate to participate in core activities of religion, including services, was clearly established. (Fox Lake Correctional Institution, Wisconsin)

U.S. District Court
QUALIFIED
IMMUNITY

Omar v. Casterline, 414 F.Supp.2d 582 (W.D.La. 2006). A detainee brought an action pursuant to *Bivens* and the Religious Freedom Restoration Act (RFRA), alleging that federal prison officials subjected him to an unconstitutional search and failed to accommodate his religious needs. The defendants moved for summary judgment and the court granted the motion. The district court held that: the warden of the federal penitentiary at which the detainee was held was not liable for alleged violations of the detainee's right to free exercise of religion; the detainee failed to show that officials served him pork in violation of his right to free exercise of religion; qualified immunity shielded the officials from liability to the extent that their alleged failure to inform the detainee that he was being served pork substitutes violated his right to free exercise of religion; prison officials did not violate the detainee's free exercise rights by not informing him of the time so that he could pray at appropriate times of day; officials' refusal to hold three of the detainee's meals during Ramadan did not violate his free exercise rights; allegations that prison officials mocked the detainee's religion at most asserted a de minimis violation of the detainee's free exercise rights; and, the detainee did not establish a violation of his rights under RFRA. According to the court, allegations that the Muslim detainee asked his case manager at the federal penitentiary for a clock so that he would know when to say his prayers, and that the case manager said "You think this is going to work?" after the detainee was praying, sufficiently alleged the case manager's personal participation in alleged violations of the detainee's right to free exercise of religion. (United States Penitentiary, Pollock, Louisiana)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Plemmons v. Roberts, 439 F.3d 818 (8th Cir. 2006). A county jail inmate who had been arrested for failing to pay child support brought a § 1983 action against a county, county sheriff, and corrections officers, alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion for summary judgment and they appealed. The court of appeals held that genuine issues of material fact as to whether the county jail inmate suffered from a serious heart condition, whether jail officials were notified of the inmate's history of heart problems, whether officials failed to recognize that the inmate was suffering from the symptoms of a heart attack that would be obvious to a lay person, whether the officials acted promptly to obtain necessary medical help, and whether the officials were properly trained to deal with such a medical emergency, precluded summary judgment in favor of the defendants. According to the court, the corrections officers' alleged delay in providing medical care to the inmate who was having a heart attack constituted conduct that violated clearly established law, and therefore the officers were not entitled to qualified immunity in the inmate's § 1983 Eighth Amendment deliberate indifference claim. The inmate alleged that two officers inexcusably delayed in summoning an ambulance even though he had told them that he had a history of heart trouble. The court noted that the medical intake form completed by one of the officers did not contain any mention of heart problems. (Pulaski County Jail, Missouri)

U.S. District Court
OFFICIAL CAPACITY
SOVEREIGN
IMMUNITY

Price v. Caruso, 451 F.Supp.2d 889 (E.D.Mich. 2006). A state prison inmate brought a pro se suit against the director of the state corrections department, claiming that failure to provide transportation to another facility in order to permit his minimum attendance requirement for Jewish services to be satisfied, was a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found material issues of fact, as to whether there were sufficient

Jewish inmates in the prison to conduct services, precluded summary judgment. The court found that the inmate's claim for damages, arising from the refusal of authorities to transport him to another facility, was not rendered moot when he was transferred to another facility where need for transportation no longer existed. According to the court, the inmate could pursue his damages claim against the director in her official capacity, claiming that his rights under the RLUIPA were violated because it was not clear whether, in accepting federal funding, the state had waived sovereign immunity, and with it the director's official capacity immunity. (Southern Michigan Correctional Facility)

U.S. District Court
QUALIFIED
IMMUNITY

Rasul v. Rumsfeld, 414 F.Supp.2d 26 (D.D.C. 2006). Former detainees at a military facility in Guantanamo Bay, Cuba, sued the Secretary of Defense and commanding officers, alleging they were tortured. The defendants moved to dismiss and the district court granted the motion in part, and deferred in part. The court held that military personnel supervising the interrogation of detainees at the facility had qualified immunity from a claim that they promoted or condoned torture in violation of Fifth and Eighth Amendment rights of detainees, because the question as to whether the detainees had rights under the constitution had not been resolved by high courts and therefore personnel could not have known that their conduct was wrongful. The court noted that District of Columbia law applied to the question of whether military personnel at Guantanamo Bay, Cuba, were acting within the scope of their employment when they allegedly tortured detainees. The prisoners alleged various forms of torture, including hooding, forced nakedness, housing in cages, deprivation of food, forced body cavity searches, subjection to extremes of heat and cold, harassment in the practice of their religion, forced shaving of religious beards, placing the Koran in the toilet, placement in stress positions, beatings with rifle butts, and the use of unmuzzled dogs for intimidation. The court found "most disturbing" their claim that executive members of the U. S. government were directly responsible for the "depraved conduct the plaintiffs suffered over the course of their detention." (U.S. Naval Station, Guantanamo Bay, Cuba)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Short v. Smoot, 436 F.3d 422 (4th Cir. 2006). The wife and administrator of the estate of a detainee who committed suicide in jail brought a § 1983 action against a county and sheriff's deputies alleging deliberate indifference to a substantial risk that the detainee would commit suicide. The district court denied summary judgment for the defendants and they appealed. The appeals court held that jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity, but the jailer who observed the detainee in the cell by video surveillance was not entitled to qualified immunity. According to the court, the jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity even though they did not remove the detainee's clothing and shoelaces, because the detainee did not have the right to have his jailers take precautions against his suicide beyond placing him in a cell under video surveillance. The court found that the jailer who observed the detainee in his cell by video surveillance was not entitled to qualified immunity because the jailer observed the detainee remove his shoelaces, tie them to a bar, place a noose around his neck, and test the weight of his rope. The jail policy and procedures manual in effect at the time addressed the proper treatment of potentially suicidal inmates and required custodial officers to remove all potential tools such as sheets, blankets, and shoelaces, to conduct inmate checks at random intervals at least twice per hour, and to make reports of any unusual occurrences. The jail used surveillance cameras to monitor inmate activity. The court reviewed the videotape taken from the surveillance camera that recorded the detainee's activity and it showed the detainee removing the laces from his shoes, tying them together, and climbing from his bed to the bars of his cell. (Warren County Jail, Virginia)

U.S. Appeals Court
ELEVENTH AMEND-
MENT

Thomas v. St. Louis Bd. of Police Com'rs, 447 F.3d 1082 (8th Cir. 2006). An arrestee who was involuntarily committed to a mental hospital brought an action against a city board of police commissioners and police officers, alleging false arrest, unlawful detention and confinement, malicious abuse of process, and intentional infliction of emotional distress. The district court dismissed the case but the appeals court reversed and remanded, finding that the board was not entitled to Eleventh Amendment sovereign immunity. The court found that binding precedent directed that the board is not an arm of the state and thus was not entitled to Eleventh Amendment immunity. (St. Louis Board of Police Commissioners)

U.S. District Court
QUALIFIED
IMMUNITY

Turner v. Huibregtse, 421 F.Supp.2d 1149 (W.D.Wis. 2006). An inmate sued a deputy warden and two correctional officers under § 1983, claiming that they violated his rights under the Eighth Amendment when one officer sexually assaulted the inmate during a pat search and the other officers failed to prevent the assault. The defendants moved to dismiss. The district court held that the inmate stated a claim against one officer who allegedly grabbed the inmate's buttocks and fondled his penis during a search, and against a second officer who allegedly held the inmate and laughed while the first officer grabbed the inmate's buttocks and fondled his penis. The court held that the officers were not entitled to qualified immunity where, at the time of the search, it was clearly established that an otherwise legal search that was conducted in a harassing manner intended to humiliate and inflict psychological pain was unconstitutional. According to the court, if the inmate showed that he was sexually assaulted during the search, but failed to show that he suffered any physical injury, he would not be entitled to compensatory damages but he could be

entitled to other forms of recovery, such as nominal and punitive damages. (Wisconsin Secure Program Facility, Boscobel, Wisconsin)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Vaughn v. Greene County, Arkansas, 438 F.3d 845 (8th Cir. 2006). The sister of a pretrial detainee brought a civil rights action against a sheriff and others to recover damages related to the in-custody death of her brother. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The court of appeals dismissed in part, reversed and remanded in part. The court held that the county sheriff had no knowledge of the pretrial detainee's serious medical needs, and thus was entitled to qualified immunity. The court noted that the sheriff had no personal interaction with the pretrial detainee during his incarceration, and there was no indication that the sheriff knew the pretrial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. According to the court, the sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to the pretrial detainee's serious medical needs, as required to be held individually liable for the detainee's death in a § 1983 action. The 46-year-old detainee had completed a medical intake form indicating he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although he had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. The jail ran out of his anti-depressant medication for two days and the detainee began to act odd. He was moved to an isolation cell to be monitored. He was later found dead in the cell. An autopsy led to the determination that the detainee died of natural causes--arteriosclerotic cardiovascular disease--causing a heart attack that resulted in his death. Detectable amounts of his anti-depressant medication were found in the detainee's system during the autopsy. (Greene County Jail, Arkansas)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Walker v. City of Orem, 451 F.3d 1139 (10th Cir. 2006). Two separate actions were brought against a county and individual officers arising out of a police shooting and the subsequent detention of witnesses to the shooting. The district court granted the officers' motion for summary judgment based on qualified immunity. The appeals court held that the 90-minute detention of witnesses to a police shooting was not reasonable for investigative purposes under the Fourth Amendment, but that the constitutional rights of the witnesses to a police shooting to not be detained for 90 minutes following the shooting was not clearly established at the time. According to the court, the witnesses to the shooting failed to establish the county's policy or custom to train its officers concerning the constitutional limitations on detention of witnesses in connection with the police shooting investigations. (Utah County Sheriff's Office, Utah)

U.S. Appeals Court
ABSOLUTE
IMMUNITY

Williams v. Consovoy, 453 F.3d 173 (3rd Cir. 2006). A former state prisoner brought a § 1983 action against parole board members, a psychologist who contracted with the state to provide mental health services, and others, alleging that his arrest for a parole violation and the subsequent decisions of the parole board violated his Fourth and Eighth Amendment rights. The district court granted summary judgment for some parole board members and the arresting officer on immunity grounds, and granted the psychologist's motion for summary judgment. The former prisoner appealed. The appeals court affirmed and held that: (1) the claim against parole board members and the arresting officer was not cognizable under § 1983; and (2) the psychologist enjoyed absolute immunity. According to the court, regardless of the fact that federal habeas relief was no longer available, the parole revocation decision had not been rendered invalid, and success on the former prisoner's claims would necessarily invalidate a revocation decision. The court held that the private psychologist who contracted with the state to perform the evaluation and presented his findings to the adjudicative parole board, which then relied on his report and expertise in reaching its ultimate decision to deny the inmate parole, acted as an arm of the court and enjoyed absolute immunity from the inmate's § 1983 action alleging the wrongful denial of parole. (New Jersey State Parole Board)

U.S. District Court
QUALIFIED
IMMUNITY

Ziamba v. Armstrong, 433 F.Supp.2d 248 (D.Conn. 2006). A prison inmate sued a correctional officer under § 1983, seeking actual damages of \$100,000 and punitive damages of \$150,000, for injuries incurred when excessive force was used to place the inmate in a four-point restraint. A jury returned a verdict against one officer, who moved for judgment as matter of law and a new trial. The district court denied the motions, finding that the officer was not entitled to qualified immunity and that the jury could find that the officer had the requisite state of mind when he attacked the inmate. The court found that compensatory damages did not shock the conscience and that punitive damages of \$150,000 were warranted. The jury found that the officer hit the inmate in the face, knelt on him and otherwise inflicted pain in the course of securing the inmate in a four-point restraint, where he remained for 22 hours. The court noted that the officer engaged in reprehensible conduct by hitting the inmate after the inmate was secured, and that punitive damages were only 50% higher than compensatory damages. (Connecticut Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court found that the detainee's allegations that a DOC captain placed him in solitary confinement in retaliation for his oral complaint to the captain that his newly-assigned cellmate was HIV positive, stated a claim under § 1983 for retaliation for exercising First Amendment free speech rights. The court found that whether the detainee had a protected right under the First Amendment, to complain to the captain was not clearly established at the time, and thus, the captain had qualified immunity from the detainee's § 1983 claim. The court found that the detainee's allegations that the Director of the Department of Corrections (DOC), despite his actual and constructive knowledge that DOC employees were engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury through over-detention, failed to train, monitor, and discipline DOC employees with regard to timely release of inmates from DOC custody, and that the Director's deliberate failure to do so caused detainee's over-detention, were sufficient when construed liberally to state a claim under § 1983 for violation of due process and violation of protection against cruel and unusual punishment. The court noted that the detainee had a clearly established constitutional protection against over-detention and thus, the Director was not entitled to qualified immunity. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
ELEVENTH
AMENDMENT

Curry v. South Carolina, 518 F.Supp.2d 661 (D.S.C. 2007). A former prisoner who obtained post-conviction relief treating him as juvenile, with the result that his sentence was shortened, brought a § 1983 suit against the state, various state departments, a county public defenders office, and others. A U.S. magistrate judge recommended that the court dismiss the complaint without prejudice. The former prisoner filed objections and moved to amend his complaint. The district court granted the motions in part and denied in part. The court held that the Department of Corrections and the Department of Juvenile Justice were entitled to Eleventh Amendment immunity. The court found that the public defender and the private attorney did not act under the color of state law. The court held that the public defenders office was not a state actor and that the County Solicitor's Office was entitled to Eleventh Amendment immunity. The court also found that Eleventh Amendment immunity extended to the state's Family Court. But the court ruled that the proposed amendment of the complaint was not futile to the extent that it sought to add a municipal police department as a defendant. The court noted that the amended complaint alleged that the police department had improperly treated the criminal defendant as an adult with the result that he was sentenced as an adult without the benefit of a juvenile waiver hearing. (Charleston County, South Carolina)

U.S. District Court
QUALIFIED IMMUNITY

Farid v. Ellen, 514 F.Supp.2d 482 (S.D.N.Y. 2007). A state inmate brought a suit against correctional officials under § 1983, alleging that he was deprived of rights protected by the First Amendment when he was disciplined by prison officials for possessing and distributing a booklet of which he was the principal author. The parties filed motions for summary judgment which the district court granted in part and denied in part. The court found that prison officials were entitled to qualified immunity from money damages because the right of the inmate not to be punished for possession or distribution of written expression of ideas, pursuant to prison rules that did not give notice of the basis on which such written expression would be determined to be improper, was not clearly established. On appeal (593 F.3d 233) the appeals court found that fact issues as to basis for the prisoner's punishment precluded summary judgment on the qualified immunity issue, and officials reasonably should have known that the prisoner's rights were clearly established and that their actions violated those rights. (Woodborne Correctional Facility, New York)

U.S. District Court
ELEVENTH
AMENDMENT

Guarneri v. West, 518 F.Supp.2d 514 (W.D.N.Y. 2007). A state prisoner brought a civil rights action alleging that various government and prison personnel had violated his constitutional rights. The defendants brought motions to dismiss and the district court granted them in part. The court held that the prisoner stated a civil rights claim against prison superintendents but that the claims against the officials in their official capacities were barred by the Eleventh Amendment. The court noted that the state prison, as a state agency, enjoyed Eleventh Amendment immunity. (New York State Department of Correctional Services)

U.S. District Court
QUALIFIED IMMUNITY

Hendon v. Ramsey, 528 F.Supp.2d 1058 (S.D.Cal. 2007). A state inmate filed a § 1983 action alleging that prison medical officials involuntarily administered anti-psychotic medications without following proper procedures and in deliberate indifference to his medical needs. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the involuntary administration of anti-psychotic medications to the inmate did not demonstrate deliberate indifference to the inmate's serious medical needs, as required to establish an Eighth Amendment violation, where the officials administered the drugs in an attempt to treat the inmate's mental health crisis. But the court held that the post-deprivation remedies available to the California inmate after the officials forcibly administered anti-psychotic drugs were insufficient to protect the inmate's due process liberty interest in being free from involuntary medication. According to the court, although state law established procedural safeguards before inmates could be involuntarily medicated, the prison officials allegedly disregarded their duty to comply with those established pre-deprivation procedures. The court found that the inmate's right to be free from arbitrary administration of anti-psychotic medication was clearly established by existing case law in 2002, the time of this incident, and therefore state prison officials were not entitled to qualified immunity from liability. (California State Prison-Sacramento)

U.S. District Court
QUALIFIED IMMUNITY

Jenkins v. DeKalb County, Ga., 528 F.Supp.2d 1329 (N.D.Ga. 2007). Survivors of a county jail detainee who had died as the result of an apparent beating by a fellow inmate brought a § 1983, Eighth and Fourteenth Amendment action against a county sheriff in his individual capacity, and against corrections officers. The defendants moved for summary judgment on qualified immunity grounds. The district court granted the motion. The 71 year old pretrial detainee suffered from multiple mental illnesses including schizophrenia and dementia, which reportedly manifested themselves in the form of delusions, paranoia, bizarre thoughts and behavior, physical violence, and verbal outbursts that included racial epithets. The court held that county corrections officers' putting the inmate into a cell different from the one to which he had been assigned, allegedly leading to the beating death of a pretrial detainee who shared the same cell, did not violate the detainee's right against cruel and unusual punishment. The court noted that even though the action violated a jail policy, the policy was created primarily to keep track of inmates' placement, not to maintain inmate safety, and there was no evidence of widespread inmate-on-inmate violence due to the misplacement of inmates. The court found that the plaintiffs failed to show that the sheriff's alleged poor training and supervision of corrections officers led to the officers' allegedly inadequate reaction to the incident between the jail inmates, which ended with the beating death of one inmate. The court also found that the sheriff's failure to comply with a court order to transfer the pretrial detainee to a mental health facility did not show supervisory liability because the purpose of the transfer order was likely to get the detainee treatment for mental illness, not to protect him. The court held that the county corrections officers were acting within the scope of their duties when they mistakenly placed a fellow inmate in the same cell with a pretrial detainee, and thus the officers were eligible for qualified immunity in the detainee's survivors' § 1983 Eighth and Fourteenth Amendment action. The court noted that the fact that the mistake violated jail policies or procedures did not mean that the officers were not exercising discretionary authority. (DeKalb County Jail, Georgia)

U.S. Appeals Court
ABSOLUTE IMMUNITY
QUASI-JUDICIAL
IMMUNITY

Maness v. District Court of Logan County-Northern Div., 495 F.3d 943 (8th Cir. 2007). After a state court clerk refused his repeated requests to present his application to proceed in forma pauperis (IFP), the federal district court dismissed a prisoner's § 1983 action arising from his state court conviction. The appeals court affirmed, finding that the judge and prosecutor enjoyed absolute immunity, and the district court clerk's ministerial decision to not present the prisoner's IFP application to the Arkansas state court did not violate the prisoner's right of access to the court. The appeals court noted that the clerk who allegedly refused to present the criminal prisoner's IFP application to a circuit judge was not shielded by absolute quasi-judicial immunity in the prisoner's subsequent civil rights action. (Logan County District Court, Arkansas)

U.S. District Court
QUALIFIED IMMUNITY
SOVEREIGN IMMUNITY

Strope v. Collins, 492 F.Supp.2d 1289 (D.Kan. 2007). Inmates brought a civil rights action against prison officials, stemming from censorship of magazines containing alleged nudity. The parties moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that summary judgment on the inmates' claims alleging First Amendment violations was precluded by genuine issues of material fact, regarding whether prison officials' withholding of publications containing alleged nudity was reasonably related to legitimate penological interests. The court found that an inmate who sued prison officials was afforded adequate procedural due process in the denial of access to magazines containing alleged nudity, where the inmate was given written notice of withholding of the magazine by way of an "Appeal of Censored Material," was told verbally about the refusal to process a Special Purpose Order (SPO) for a supplemental issue, and had the opportunity to grieve the censorship and appeal decisions to prison officials who were not involved in original process.

According to the court, the prison officials were not entitled to sovereign immunity to the extent that the inmates were seeking prospective injunctive relief from the officials in their official capacities, where the inmates adequately indicated that they were challenging the nudity regulation itself and the manner in which it could be applied prospectively. The court held that officials were not entitled to qualified immunity to the extent that they were being sued in their individual capacities, where the claim that the censorship was not related to legitimate penological interests implicated clearly-established First Amendment rights. The court held that genuine issues of material fact, regarding the extent to which the prison warden personally participated in the alleged deprivation of the inmates' First Amendment right to receive information by censoring magazines containing alleged nudity, precluded summary judgment on claims alleging the warden's vicarious liability under a federal civil rights statute. (Lansing Correctional Facility, Kansas)

U.S. District Court
QUALIFIED IMMUNITY

Thomas v. Baca, 514 F.Supp.2d 1201 (C.D. California 2007). Pre-trial detainees and post-conviction prisoners who alleged they were required to sleep on the floor of county jail facilities brought a civil rights class action suit against a sheriff in his individual and official capacities. The prisoners moved for summary adjudication of certain issues and the sheriff moved for summary judgment, or in the alternative, for summary adjudication. The district court granted the motions in part and denied in part. The court held that undisputed evidence established the custom of forcing inmates to sleep on the floor and that this custom violated the Eighth Amendment, even if the majority of inmates had bunks and floor-sleeping inmates were provided with mattresses. The plaintiffs had presented undisputed evidence that over 24,000 instances of floor sleeping occurred in the jail system in a four month period. The court found that the sheriff was entitled to qualified immunity from liability for the jail's custom of forcing some inmates to sleep on the floor, where it was not clearly established during the 2002 to 2005 period covered by the suit, that providing inmate with a mattress would not avoid a violation or that floor sleeping violated the Eighth Amendment rights of convicted inmates as well as due process rights of pretrial detainees. (Los Angeles Sheriff Department, California)

U.S. District Court
QUALIFIED IMMUNITY

Wilkerson v. Stalder, 639 F.Supp.2d 654 (M.D.La. 2007). Two state prisoners brought Eighth Amendment claims for cruel and unusual punishment, and claims under state law, against state officials and prison officials, including the Secretary of the Louisiana Department of Public Safety and Corrections, a prison warden, and members of the lockdown review board, relating to the prisoners' extended lockdown of approximately 28 to 35 years in the prison's closed cell restriction (CCR) unit. The prisoners asserted deprivation of sleep, exercise, social contact,

and environmental stimulation. Both prisoners had been charged with and convicted of murdering a correctional officer during a riot. The district court granted summary judgment to the defendants in part and denied in part. The court held that the Secretary of Louisiana Department of Public Safety and Corrections was not liable, as a supervisory official, to state prisoners under § 1983 for the alleged violation of the Eighth Amendment protection against cruel and unusual punishment, absent evidence that the Secretary was aware that the prisoners' extended lockdown allegedly was without a current legitimate penological justification.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoners' extended lockdown, for from approximately 28 to 35 years, in prison's closed cell restriction (CCR) unit deprived them of at least one of the basic human needs asserted by prisoners, i.e., sleep, exercise, social contact, or environmental stimulation. The court also found a genuine issue of material fact as to whether there was lack of legitimate penological justification for the extended lockdown of the prisoners, which was relevant to whether prison officials were deliberately indifferent to state prisoners' basic human needs. According to the court, prison officials had fair warning that continued confinement of the prisoners in extended lockdown for over 28 years could be constitutionally infirm, and thus, they were not entitled to qualified immunity from the prisoners' § 1983 claims alleging cruel and unusual punishment under the Eighth Amendment. (Louisiana State Penitentiary at Angola, Louisiana)

2008

U.S. District Court
QUALIFIED IMMUNITY

Alvarado v. Battaglia, 539 F.Supp.2d 1022 (N.D.Ill. 2008). A state prisoner brought a § 1983 action against a warden and corrections officers arising from an alleged incident in which an officer discharged a firearm in the direction of the prisoner and other inmates from a guard tower that overlooked the inmates' recreation yard. The district court held that the prisoner stated an excessive force claim against the officer who allegedly discharged the firearm but failed to state a claim against the warden. According to the court, the prisoner's allegations that the corrections officer discharged a firearm in the direction of the prisoner and other inmates in response to the inmates' banter were sufficient to state an excessive force claim, so as to overcome the officer's qualified immunity defense. The court found that the prisoner's allegations that prison officials knew that the corrections officer who allegedly discharged the firearm was mentally unstable, yet allowed her to continue working, were insufficient to establish that the warden acted with deliberate indifference, as required for the warden to be held liable under § 1983 for the officer's actions. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
QUALIFIED IMMUNITY

Amrine v. Brooks, 522 F.3d 823 (8th Cir. 2008). A prisoner sued a prison investigator and deputy sheriff under § 1983 alleging that they violated his constitutional rights during an investigation of a prison stabbing, for which the prisoner was convicted and sentenced to death, but later exonerated during a habeas proceeding. Following the death of the investigator, his estate was substituted as a party. The district court denied the prisoner's motion to alter or amend judgment and the prisoner appealed. The court held that the investigator and deputy were qualifiedly immune from the prisoner's claim of unreasonable seizure, assuming that the prisoner's placement in a detention cell by the investigator and deputy pursuant to the investigation of a prison stabbing was an arrest that was supported by arguable probable cause. The court noted that inculpatory evidence against the prisoner included evidence of a motive to kill the victim and exculpatory evidence included the officer's identification of a third inmate as the inmate whom the victim was chasing, such that more than a minimal investigation was required. (Missouri Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Anglin v. City of Aspen, Colo., 552 F.Supp.2d 1205 (D.Colo. 2008). A pretrial detainee brought a civil rights action, alleging that a county sheriff, county jailers, and others violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while in custody at a county jail. The district court granted summary judgment for the defendants in part. The court held that a county sheriff's deputy personally participated in the decision to sedate the detainee and therefore the deputy could be liable in his individual capacity under § 1983. The deputy had called paramedics and admittedly lobbied the medics to sedate the detainee, he allegedly falsely reported to the paramedics that the detainee had been banging her head and throwing herself against her steel cell door, and he participated in physically restraining the detainee during the injection, at the request of the paramedics. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the deputy falsely reported to the paramedics. The court found that the deputy was not entitled to qualified immunity from liability. (Pitkin County Jail, Colorado)

U.S. Appeals Court
QUALIFIED IMMUNITY

Archuleta v. Wagner, 523 F.3d 1278 (10th Cir. 2008). An arrestee brought a § 1983 action against a jailer and others alleging her Fourth and Fourteenth Amendment rights were violated when she was strip searched. The district court denied the jailer's request for qualified immunity and the jailer appealed. The appeals court affirmed the district court decision. The court held that the jailer was not justified in conducting the strip search during booking, following the arrest pursuant to an arrest warrant for harassment, where the arrestee never intermingled with the general jail population but rather was confined in a cell by herself for several hours while awaiting bail. The court noted that three pat down searches had been performed on the arrestee prior to booking, the arrestee was wearing shorts and a sleeveless blouse at the time of booking, the jailer saw that the arrestee did not have any tattoos or moles indicating that she was the culprit, and the crime of harassment was not a crime of violence. The court found that the arrestee had a right not to be strip searched during booking when she was not going to intermingle with the general prison population. She had already been through a pat-down search, and there was no reasonable suspicion that she had a weapon. According to the court, the jailer who conducted the strip search was not entitled to qualified immunity because at the time of this incident it was clearly established that a strip search could be justified if there was a reasonable suspicion that the detainee possessed weapons and the detainee intermingled with the general jail population. The 46-year-old mother of nine had been riding in a family van with some of her children when she was stopped by an officer because there was an extra child in the back seat. The

officer arrested her with the belief that she was the person for whom a warrant had been issued. After being booked at the jail it became apparent that she was not the person named in the warrant because she did not have the tattoos and moles that were described in the file. Knowing that the plaintiff was not the person named in the warrant, a jail officer nonetheless continued to process and strip search her. As she was standing naked, she began to lactate. She tried to cover herself but was told by the officer to put her arms down. She was mocked continually by the officer and a male officer during this incident. (Jefferson County Detention Facility, Colorado)

U.S. Appeals Court
QUALIFIED IMMUNITY

Brown v. Fortner, 518 F.3d 552 (8th Cir. 2008). A former inmate brought a § 1983 action against correction officers alleging deliberate indifference by failing to provide safe transportation. The district court denied the officers' claims of qualified immunity and denied their motions for summary judgment. The officers appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence that a correction officer transporting inmates as part of a convoy refused to fasten the inmate's seatbelt knowing that he could not do so himself because of his shackles, and drove recklessly while ignoring requests to slow down, was sufficient for a reasonable jury to conclude that the officer manifested deliberate indifference for the inmate's safety in violation of the Eighth Amendment. The court found that another correction officer who was driving a vehicle as part of the convoy who drove too fast and followed the lead vehicle too closely did not act with deliberate indifference for the safety of inmate passenger in the lead vehicle, even though the officer's driving proximately caused a multiple vehicle rear-end accident which resulted in the inmate's injuries, absent evidence that the officer was asked to slow down and refused, or that the officer knew that the inmate had been denied a seatbelt. (Missouri Department of Corrections)

U.S. Appeals Court
QUALIFIED IMMUNITY

Brumfield v. Hollins, 551 F.3d 322 (5th Cir. 2008). The daughter of a detainee who hung himself while confined in a "drunk tank" of a county jail brought a § 1983 action against the county, and a sheriff and deputies in their individual and official capacities. The district court awarded summary judgment to each defendant sued in his individual capacity on the basis of qualified immunity, but denied summary judgment to individual defendants in their official capacities and to the county. After a trial, the district court directed a verdict in favor of all officers and the county. The daughter appealed. The appeals court affirmed. The court held that the sheriff was protected by qualified immunity and that the district court did not abuse its discretion by excluding expert testimony indicating that the detainee was alive when paramedics arrived at the jail. The court found that the county was not liable under § 1983. According to the court, the sheriff was entitled to qualified immunity from the claim that he failed to adopt any written policy pertaining to inmate supervision or medical care, where verbal policies existed concerning inmate supervision and medical care. The court found that the sheriff's efforts in training and supervising deputies were not deliberately indifferent, as required for the sheriff to be liable under § 1983 for the suicide of a drunk driving detainee. The court noted that the deputies did receive training, and that there was no evidence of a pattern of similar violations or evidence that it should have been apparent that a constitutional violation was the highly predictable consequence of an alleged failure to train. The court found that while the deputies' conclusion that the detainee who had hung himself was already dead, and their resulting failure to make any attempt to save his life, were arguably negligent, this conduct alone did not amount to deliberate indifference, nor was any county custom or policy the moving force behind the deputies' conduct, as required for the county to be liable under § 1983 for denial of reasonable medical care. (Marion County Jail, Mississippi)

U.S. District Court
QUALIFIED IMMUNITY

Bullock v. Sheahan, 568 F.Supp.2d 965 (N.D.Ill. 2008). Two county inmates who were ordered released after being found not guilty of the charges against them brought an action individually and on behalf of a class against a county sheriff and county, challenging the constitutionality of a policy under which male inmates, in the custody of the Cook County Department of Corrections (CCDC), were subjected to strip searches upon returning to CCDC after being ordered released. The district court held that male inmates in the custody of CCDC who were potentially discharged were similarly situated to female potential discharges, as supported the male inmates' claim that the county's policy of strip searching all male discharges and not all female discharges violated the Equal Protection Clause. The court noted that the two groups of inmates were housed within the same facility, there were varying security classifications within each group that corresponded to each other, statistics concerning inmate violence clearly indicated that it took place among female as well as male inmates, and the county's primary justification for distinguishing between male and female discharges, namely, its alleged inability to hold them in a receiving, classification, and diagnosis center (RCDC) while their records were reviewed, was a logistical rather than a security concern. The court found that the county sheriff was not acting as an arm of the state insofar as requiring strip searching of discharged male inmates, and thus was not entitled to qualified immunity. The court noted that an Illinois Administrative Code (IAC) provision stating that "detainees permitted to leave the confines of the jail temporarily, for any reason, shall be thoroughly searched prior to leaving and before re-entering the jail" did not mandate strip searches, just that inmates be "thoroughly searched." (Cook County Department of Corrections, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Dean v. City of Fresno, 546 F.Supp.2d 798 (E.D.Cal. 2008). The widow and children of a detainee who died from complications of cocaine ingestion while incarcerated in a county jail, brought an action in state court against a city and two police officers. After removal to federal court, the defendants moved for summary judgment on all claims. The district court granted the motion in part and remanded. The court found that the officers violated the detainee's Fourteenth Amendment right to medical care when they did not obtain medical aid for the detainee after he vomited in the patrol car and rock cocaine was found in the vomit. According to the court, a rational jury could conclude that the officers knew that the detainee had swallowed rock cocaine and had a serious medical condition, and that the officers did not render care themselves, did not call for paramedics, did not take the detainee to the hospital, and did not report the discovery of the rock cocaine in the vomit to the jail nurse. The court found that the officers were entitled to qualified immunity where the detainee, who did not exhibit signs of being high as his detention progressed and who was previously communicative of his symptoms, gave an inaccurate reason to explain his condition and never requested medical treatment. (City of Fresno and Fresno County Jail, California)

U.S. Appeals Court
QUALIFIED IMMUNITY

Harrison v. Ash, 539 F.3d 510 (6th Cir. 2008). The personal representative of the estate of an inmate who died after suffering a severe asthma attack at a jail brought a § 1983 action against jail nurses and officers, alleging deliberate indifference to the inmate's serious medical needs. The inmate died while serving a 35-day sentence for failing to pay child support. The district court denied the defendants' motion for summary judgment and the defendants appealed. The court held that the appeals court had jurisdiction over the officers' appeal and that the officers were entitled to qualified immunity, and that the court did not have jurisdiction to consider the nurse's appeals. The court held that the jail nurses, as employees of a for-profit private medical provider, rather than the county, could not assert a qualified immunity defense to the § 1983 action. Although the nurses were acting under the color of state law, because of the contractual relationship between the county and the provider, there was no firmly rooted common law practice of extending immunity to private actors, and policy rationales undergirding qualified immunity did not support extending immunity to the nurses. (Macomb County Jail, Michigan)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Haybarger v. Lawrence County Adult Probation and Parole, 551 F.3d 193 (3rd Cir. 2008). A former state employee brought an action against his employer and others, alleging violations of the Rehabilitation Act (RA), the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA). The district court dismissed all but the employee's RA claims, and the defendants appealed. The appeals court affirmed, finding that receipt of federal funds by a subunit of a Pennsylvania judicial district waived Eleventh Amendment immunity under the Rehabilitation Act (RA) for claims against the employer. The court noted that an Eleventh Amendment immunity waiver under the Rehabilitation Act applies to all of the operations of a state department regardless of whether the particular activities are federally assisted. (Lawrence County Adult Probation and Parole Department, Pennsylvania)

U.S. Appeals Court
QUALIFIED IMMUNITY

Hubbard v. Taylor, 538 F.3d 229 (3rd Cir. 2008). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds. The district court granted the defendants' motion for summary judgment and the detainees appealed. The appeals court vacated and remanded. On remand the district court granted the defendants' renewed motions for summary judgment and the detainees again appealed. The appeals court affirmed. The court held that triple-celling of the pretrial detainees was rationally related to prison officials' legitimate governmental interest in trying to manage overcrowding conditions at the prison, for the purposes of the detainees' claim that triple-celling violated their Fourteenth Amendment due process right. The court noted that even if the detainees' due process constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the prison officials to qualified immunity in the detainees' suit under § 1983 challenging conditions of their confinement. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court
QUALIFIED IMMUNITY

Iko v. Shreve, 535 F.3d 225 (4th Cir. 2008). The estate and family of a deceased inmate brought a § 1983 survival and wrongful death action against correctional officers, alleging violations of the inmate's Eighth Amendment rights. The district court granted, in part, the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that an officer violated the deceased inmate's Eighth Amendment right to be free from excessive force, arising from the inmate's death after his extraction from his cell involving the use of pepper spray, and thus the officer was not entitled to qualified immunity on § 1983 claims. The court found there was no question that some dispersal of pepper spray was warranted in carrying out the extraction. But the officer's final burst of pepper spray was deployed after the inmate had laid down on the floor, and the officer and members of the extraction team never changed the inmate's clothing or removed the spit mask covering his nose and mouth and never secured medical treatment for the inmate. Although the inmate proffered his hands through the door pursuant to the officer's order, albeit in front of rather than behind him, the officer deployed several additional bursts of pepper spray even after the inmate attempted to comply with the order, and the inmate never reacted violently. (Western Correctional Institution, Maryland)

U.S. District Court
ELEVENTH
AMENDMENT
QUALIFIED IMMUNITY

Johnson v. Collins, 564 F.Supp.2d 759 (N.D. Ohio 2008). A state prisoner brought a civil rights suit against a prison warden and others, seeking injunctive relief against the enforcement of a prison policy that banned the wearing of shoulder-length dreadlocks. The district court denied the warden's motion for judgment on the pleadings. The court held that the possibility that the prisoner could show that the warden, by adhering to a prison policy that prohibited the wearing of shoulder-length dreadlocks for security reasons, was continuing to violate the prisoner's federal rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) by substantially burdening the exercise of his Rastafarian religion, precluding the Eleventh Amendment from barring the suit seeking injunctive relief against the warden in his official capacity. The court found that the warden was not entitled to qualified immunity as a government official performing discretionary functions on the claim that he substantially burdened the prisoner's rights under RLUIPA to practice his Rastafarian religion. The court held that the prisoner's suit for injunctive relief against ongoing enforcement of the prison policy banning the wearing of shoulder-length dreadlocks was not mooted by his transfer to another prison within the same state system, nor did a change in the prison grooming code to allow for religious-based exemptions. (Madison Correctional Institution, Toledo Correctional Institution, Mansfield Correctional Institution, Lebanon Correctional Institution, Ohio)

U.S. District Court
QUALIFIED IMMUNITY

Lloyd v. Lee, 570 F.Supp.2d 556 (S.D.N.Y. 2008). A prisoner brought a pro se § 1983 action against prison doctors and a mayor, alleging that the defendants denied him adequate medical care while he was incarcerated in violation of his constitutional rights. The district court dismissed the action in part and denied the defendants' motion for dismissal in part. The court held that the prisoner's amended complaint sufficiently alleged a serious deprivation, as required to state an Eighth Amendment claim, and the complaint sufficiently alleged that doctors acted with deliberate indifference to the prisoner's serious medical needs. The court found that the doctors alleged to have been involved only in the first few weeks of the prisoner's medical treatment could not be charged with deliberate indifference to his serious medical needs. The court found that a qualified immunity defense did not

shield the doctors from liability. The prisoner alleged he was denied magnetic resonance imaging (MRI) scan for months and that, as a consequence, his shoulder injury was not properly diagnosed and his surgery was unreasonably delayed, and that inadequate medical treatment caused a condition of urgency, degeneration, and extreme pain, and the delayed surgery that was necessary to his recovery. The court noted that an unconvicted detainee's rights are at least as great as those of a convicted prisoner, and district courts apply the same "deliberate indifference" test developed under the Eighth Amendment to Fourteenth Amendment claims. (Manhattan House of Detention and Riker's Island Corrections Building, New York)

U.S. Appeals Court
SOVEREIGN IMMUNITY

Mayfield v. Texas Dept. of Criminal Justice, 529 F.3d 599 (5th Cir. 2008). A state prisoner, who practiced the Odinist/Asatru faith, brought claims pursuant to § 1983 against a state criminal justice department and prison officials, alleging First Amendment violations, as well as violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants' motion for summary judgment, and appeal was taken. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The court held that the claims brought by the prisoner pursuant to the § 1983 action alleging First Amendment violations and pursuant to RLUIPA seeking declaratory relief as well as a permanent injunction against prison officials in their official capacity were not barred by sovereign immunity. The court found that the prisoner's claims for compensatory damages against prison officials in their official capacity on claims brought pursuant to § 1983 alleging First Amendment violations and RLUIPA violations were barred by the provision of the Prison Litigation Reform Act (PLRA) prohibiting actions for mental or emotional injury suffered while in custody without a prior showing of physical injury. According to the court, a state criminal justice department's regulation of not allowing an Odinist group to assemble for religious services in the absence of an outside volunteer was reasonably related to a legitimate penological interest, for the purposes of determining whether the regulation encroached on the prisoner's First Amendment right to free exercise. The court noted that officials asserted justifications for the volunteer requirement that involved prison security concerns, as well as staff and space limitations. The court held that summary judgment for the state was precluded by a genuine issue of material fact as to the neutrality of the prison's enforcement of the policy of not allowing religious groups to assemble for religious services in the absence of an outside volunteer. The court also found that summary judgment was precluded by genuine issues of material fact as to whether rune literature was banned from the prison library, as to whether the prison's policy of not allowing the Odinist group to assemble for religious services in the absence of an outside volunteer imposed a substantial burden on the prisoner's religious exercise, and as to whether the prison's policy of preventing the possession of runestones substantially burdened the prisoner's religious exercise. (Texas Department of Criminal Justice, Hughes Unit)

U.S. District Court
SOVEREIGN IMMUNITY

Miller v. Johnson, 541 F.Supp.2d 799 (E.D.Va. 2008). A state prisoner brought an action against a state department of corrections and warden, seeking damages under the Rehabilitation Act. The inmate suffered from Guillain-Barre syndrome, a paralyzing neurological disorder that caused nerve damage in his feet and ankles. As a consequence of his disease, the inmate was unable to bend his left foot at the ankle and was able to walk only with great difficulty. He was able to climb stairs only while holding handrails in order to steady himself. According to the court, the inmate was a qualified person with a disability within the meaning of the Rehabilitation Act. The district court held that by accepting federal funding, the department waived sovereign immunity as a bar to the prisoner's action. (Greensville Correctional Center, Virginia)

U.S. District Court
QUALIFIED IMMUNITY

Norwood v. Woodford, 583 F.Supp.2d 1200 (S.D.Cal. 2008). A state inmate filed an action alleging that prison officials deprived him of outdoor exercise, in violation of the Eighth Amendment, and retaliated against him for asserting his right to be free from harm, in violation of the First Amendment. The officials moved to dismiss the complaint. The district court granted the motion in part and denied in part. The court held that the allegation that the inmate was deprived of outdoor exercise for 39 days was sufficient to satisfy the objective component of his Eighth Amendment claim. According to the court, the issue of whether state prison officials acted with deliberate indifference when they denied the inmate any outdoor exercise for a 39-day period during an alleged emergency lockdown situation involved fact questions that could not be resolved on a motion to dismiss. The court noted that it was clearly established at the time of the deprivation that state prison officials' denial of outdoor exercise for inmates for an extended period of time could constitute an Eighth Amendment violation, and thus the officials were not entitled to qualified immunity from liability. (Calipatria State Prison, California)

U.S. Appeals Court
ABSOLUTE IMMUNITY
PROSECUTORIAL
IMMUNITY

Odd v. Malone, 538 F.3d 202 (3rd Cir. 2008). Detainees held as material witnesses whose testimony was vital to murder prosecutions brought an action against a district attorney's office and prosecutors who had secured bench warrants for their arrests. The detainees alleged that the prosecutors failed to notify relevant authorities that the underlying action for which the first detainee was held had been continued for nearly four months and that the underlying action for which the second detainee was held had been dismissed. One detainee had been held for 54 days and the other was held for 58 days. The district court dismissed the first detainee's claims under § 1983 and state law, and denied the motion to dismiss the second detainee's § 1983 claims. The parties appealed. The appeals court held that the prosecutor's act of failing to notify the judge that issued the bench warrant for the first detainee's arrest that the prosecution had been continued was not an advocative act, warranting absolute prosecutorial immunity. The court also found that the prosecutor's act of failing to notify relevant authorities that the second detainee remained incarcerated despite dismissal of the prosecution was not an advocative act for which the prosecutor would be entitled to absolute prosecutorial immunity. The court noted that a prosecutor disobeyed a judge's explicit instructions that he be advised of any delay, as well as a rule requiring the prosecutor to keep the court informed of the status of detained material witnesses. The court concluded that policy considerations underlying absolute prosecutorial immunity counseled against granting absolute immunity to the prosecutors in these cases, where there was no common law tradition of extending absolute immunity to a prosecutor for failing to notify the court of the status of a detained witness. The court concluded that denying absolute immunity in these cases would not likely interfere with prosecutors' independent decision-making by

exposing them to vexatious litigation. The court also noted that by virtue of their status as third-party witnesses, the detainees were not entitled to the protections available to criminal defendants, including the appellate process. (Office of District Attorney of Philadelphia, Pennsylvania)

U.S. District Court
QUALIFIED IMMUNITY

Pentlarge v. Murphy, 541 F.Supp.2d, 421 (D.Mass. 2008). Detainees who had been civilly committed as sexually dangerous persons (SDPs) under Massachusetts law brought a civil rights suit against officials seeking damages and equitable relief against the enforcement of a policy requiring them to waive confidentiality as a condition to receiving sexual offender treatment. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the detainees stated a claim for declaratory and injunctive relief against the policy that forced the detainees to choose between treatment and a waiver of the right against self-incrimination. The court found that the officials were entitled to qualified immunity from liability for damages as they were not on notice of the potential unconstitutionality of the waiver policy. (Nemasket Correctional Center, Massachusetts)

U.S. District Court
QUALIFIED IMMUNITY

Pettus v. McGinnis, 533 F.Supp.2d 337 (W.D.N.Y. 2008). A state inmate brought a § 1983 action against New York State Department of Correctional Services (DOCS) employees, alleging they participated in a disciplinary proceeding against him which was initiated in retaliation for his having testified against a corrections officer at a disciplinary hearing involving another inmate. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison officials were entitled to qualified immunity from the prisoner's § 1983 claim, since at the time of the disciplinary proceedings against the prisoner, it was not clearly established that an inmate's act of providing testimony on behalf of another inmate at the other inmate's disciplinary hearing was protected by the First Amendment. The court found that a corrections officer's filing of an alleged false misbehavior report against the inmate did not result in an atypical and significant hardship in relation to the ordinary incidents of prison life, as required for the alleged filing to have violated the inmate's due process rights. The inmate was sentenced to 30 days in keeplock as a result of the charges against him, and the finding of guilt on the charge did not lack evidentiary support. (New York State Department of Correctional Services)

U.S. District Court
QUALIFIED IMMUNITY

Petzak v. Nevada ex rel. Department of Corrections, 579 F.Supp.2d 1330 (D.Nev. 2008). A 74-year-old correctional officer brought a § 1983 action against his supervisor, alleging that statutory stress electrocardiogram (EKG) testing for officers over the age of 40 violated equal protection. The district court granted summary judgment for the supervisor in part and denied in part. The court held that the differential treatment of correctional officers violated equal protection, but the supervisor was entitled to qualified immunity from damages. According to the court, the differential treatment of correctional officers over and under the age of 40, under Nevada's statutory electrocardiogram (EKG) testing requirements, was not rationally related to a legitimate government interest, violating equal protection. The court noted that while the state had an interest in requiring insured employees to submit to physicals and to be physically fit for duty, there was no evidence why officers had to undergo a stress EKG test only after reaching 40 years of age. (Nevada Dept. of Corrections)

U.S. Appeals Court
QUALIFIED IMMUNITY

Phillips v. Roane County, Tenn., 534 F.3d 531 (6th Cir. 2008). A representative of the estate of a pretrial detainee who died in a county jail of untreated diabetes brought an action against correctional officers, a jail doctor, and paramedics, alleging deliberate indifference to the detainee's serious medical condition under § 1983 and asserting state law medical malpractice claims. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that county officials were not liable under § 1983 for their alleged failure to properly train jail officers as to the proper protocols for obtaining medical treatment for the detainee, absent a showing that any individual official encouraged, authorized, or knowingly acquiesced to the officers' alleged deliberate indifference. The court found that the alleged conduct of a county jail doctor in being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, but failing to conduct more than a cursory examination, and in allegedly disregarding jail protocols, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. Because the detainee had a clearly established right under the Due Process Clause of the Fourteenth Amendment to receive medical treatment to address serious medical needs, the court found that jail officials were not entitled to qualified immunity for their alleged conduct in failing to provide the diabetic detainee with medical treatment. (Roane County Jail, Tennessee)

U.S. District Court
ELEVENTH
AMENDMENT
QUALIFIED IMMUNITY

Pugh v. Goord, 571 F.Supp.2d 477 (S.D.N.Y. 2008). State prisoners sued prison officials, alleging violations of their constitutional and statutory rights to free exercise of Shi'a Islam and to be free from the establishment of Sunni Islam. Following remand from the appeals court, the plaintiffs moved for summary judgment. The district court granted the motions in part and denied in part. The court held that one prisoner's claim for injunctive relief qualified for a "capable of repetition, yet evading review" exception, and therefore was not rendered moot by his transfer to another facility. The court noted that the corrections department had the ability to freely transfer the prisoner between facilities prior to the full litigation of his claims, and there was a reasonable expectation that the prisoner would be subject to the same action again, given that the department's policies were applicable to all of its prison facilities. According to the court, summary judgment was precluded by genuine issues of material fact as to whether a prison policy denying Shi'ite prisoners Friday prayer services independent of Sunni participation was the least restrictive means of furthering a compelling government interest, precluding summary judgment in the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the state did not waive immunity under the Eleventh Amendment as to money damages by accepting federal funds pursuant RLUIPA. The court found that Shi'ite prisoners' right to a reasonable opportunity to worship by way of separate Jumah services for Shi'ites and Sunnis was clearly established, for the purposes of determining whether prison officials were qualifiedly immune from the prisoners' free exercise claim. (New York State Department of Correctional Services, Mid-Orange Correctional Facility and Fishkill Correctional Facility)

U.S. Appeals Court
OFFICIAL CAPACITY

Richman v. Sheahan, 512 F.3d 876 (7th Cir. 2008). The administrator of the estate of contemnor filed a § 1983 suit individually and in her official capacity against deputy sheriffs in their individual capacities for violating the Fourth and Eighth Amendments. The administrator alleged that the deputies used excessive force, leading to her son's death, while restraining him for resisting arrest in a state courtroom after a judge held him in contempt. The district court granted in part, and denied in part, the deputies' motion for summary judgment on the ground of official immunity and the deputies appealed. The appeals court affirmed in part and reversed in part. The court found that the deputies were protected by official immunity for seizing the mother. According to the court, the deputy sheriffs did not subject the mother to excessive force by seizing her in the courtroom. Other deputies restrained her son for resisting arrest allegedly sat on his back. The court noted that the deputies moved the mother by wheelchair to another courtroom in a modest use of force. (Cook County, Illinois)

U.S. District Court
FTCA-Federal Tort Claims
Act
SOVEREIGN IMMUNITY

Sheppard v. U.S., 537 F.Supp.2d 785 (D.Md. 2008). A detainee brought an action against the federal Bureau of Prisons (BOP) claiming negligence pursuant to the Federal Tort Claims Act (FTCA) for his illegal detention for over nine months. The district court denied the government's motion to dismiss for lack of jurisdiction or, in the alternative, for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the role and duties of BOP personnel who were allegedly responsible for the continued confinement of the detainee during his false imprisonment. The BOP asserted that the employees were "investigative or law enforcement officers" for the purposes of the government's waiver of sovereign immunity. The detainee had been sentenced to 121 months of incarceration in a federal prison in Leavenworth, Kansas. The district court granted the request of the United States Attorney for the District of Columbia to reduce his sentence to time served and ordered his release. The detainee was not released for approximately ten months after the court's order. (District of Columbia, and U.S. Penitentiary, Leavenworth, KS)

U.S. District Court
ELEVENTH
AMENDMENT

Sisney v. Reisch, 533 F.Supp.2d 952 (D.S.D. 2008). A state inmate brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging corrections officials refused to make various accommodations for his practice of the Jewish religion. The district court held that the State of South Dakota, by accepting Federal prison funding, waived its Eleventh Amendment immunity in claims for monetary damages under RLUIPA. The court found that the officials' denial of the inmate's request for a permanent space for Jewish inmates' religious services did not impose a substantial burden on his exercise of the inmate's religion. The court noted that the inmate admitted that Jewish inmates had sufficient space for their services and that lack of a permanently designated room for their services did not prevent him from practicing his religion. (South Dakota State Penitentiary)

U.S. District Court
ELEVENTH
AMENDMENT

Smith v. County of Los Angeles, 535 F.Supp.2d 1033 (C.D.Cal. 2008). The estate of a deceased county jail inmate brought a § 1983 action against a county and officials, claiming violation of the inmate's Fourth, Fifth, Eighth and Fourteenth Amendment rights, arising out of denial of the inmate's request for an asthma inhalator. The district court denied the defendants' motion to dismiss. The court held that the Eleventh Amendment immunity of state officials did not apply to the county sheriff. The court found that the estate stated a claim that the county was liable when the inmate died allegedly because he was denied an asthma inhalator. The court held that the allegation that the county "promulgated, created, maintained, ratified, condoned, and enforced a series of policies, procedures, customs and practices which authorized the arbitrary punishment and infliction of pain, torture, and physical abuse of certain inmates and detainees" was sufficient to state a claim. The court found that the estate stated a claim that officials violated the Eighth Amendment by showing deliberate indifference to his medical condition, through allegations that they ignored the inmate's plea to be furnished with his asthma inhalator. (Los Angeles County Men's Central Jail, California)

U.S. District Court
SOVEREIGN IMMUNITY

Smith v. Stanton, 545 F.Supp.2d 302 (W.D.N.Y. 2008). A state inmate brought a § 1983 action against a state, a probation officer, a probation supervisor, and a county, alleging that his constitutional rights were violated in connection with the inclusion in a state pre-sentence report (PSR) of certain confidential psychiatric records. The court held that claims against the state were barred by the state's sovereign immunity. According to the court, the inclusion of the records in the PSR did not violate New York statutes governing PSRs and did not violate the inmate's constitutional right to privacy. (Chemung County, New York)

U.S. District Court
QUALIFIED IMMUNITY
QUASI-JUDICIAL
IMMUNITY

Stanley v. Muzio, 578 F.Supp.2d 443 (D.Conn. 2008). An arrestee brought a § 1983 action against two state judicial marshals, the Connecticut State Police and individual troopers and officers of the Connecticut State Police, alleging false imprisonment and use of excessive force. Following dismissal of claims against the State Police, troopers and officers, the marshals moved to dismiss. The district court granted the motion in part and denied in part. The court held that the marshals did not enjoy state statutory immunity from federal claims and from the state law false imprisonment claim. The court found that the arrestee stated a § 1983 claim for false imprisonment. According to the court, the marshals were not entitled to quasi-judicial immunity or qualified immunity. The court noted that the arrestee's claim for false imprisonment under Connecticut law, alleging that two state judicial marshals kicked him in the head and back after he was forcibly restrained, were sufficient to allege reckless, wanton, or malicious conduct that was outside the scope of the defendants' employment as state judicial marshals. The court found that the arrestee's allegation that two state judicial marshals told him that he had to remain in the courtroom for five minutes following a hearing on a restraining order obtained by his wife and forcibly stopped him when he tried to leave after three minutes stated a § 1983 claim for false imprisonment. (Connecticut State Judicial Marshals, Connecticut State Police)

U.S. Appeals Court
QUALIFIED IMMUNITY

Vondrak v. City of Las Cruces, 535 F.3d 1198 (10th Cir. 2008). An arrestee filed a § 1983 action against a city and its police officers alleging illegal arrest, excessive force, inadequate medical attention, and failure to train. The district court granted in part and denied in part the defendants' motion for summary judgment. The parties filed cross-appeals. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals

court held that summary judgment was precluded by genuine issues of material fact as to whether the police officers ignored the arrestee's complaints that his handcuffs were too tight, and whether the arrestee suffered permanent nerve injury because of the handcuffing. The court noted that for purposes of determining the police officers' qualified immunity from liability under § 1983 for use of excessive force, the arrestee's right to be free from unduly tight handcuffing, and the contours of that right, were clearly established in 2003. The court also found that it was clearly established that all law enforcement officials had an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence, and thus one of the officers was not entitled to qualified immunity from liability, where the officer was in close proximity to the initial handcuffing, and was present thereafter. The arrestee had been taken into custody and transported to the police station, where two blood alcohol tests were administered. Both tests showed no alcohol. He was held for another 90 minutes, during which time he made several requests for someone to loosen his handcuffs because his wrists were hurting. All requests were ignored. Eventually, the officers charged the arrestee with Driving While Under the Influence to the Slightest Degree, and they released him on his own recognizance. The charge was later dropped. Following his release, the arrestee went to an emergency room. A toxicology screening report showed no drugs or alcohol. A doctor who treated the arrestee observed "multiple superficial abrasions and ecchymosis" on both wrists. He diagnosed the arrestee with neurapraxia in both wrists, and a soft tissue sprain of the right wrist. The pain and discomfort in the arrestee's wrists did not subside, and it interfered with his ability to practice as an orthodontist and to play golf. He was diagnosed with a permanent radial nerve injury in his wrists that was caused by the handcuffing. (Las Cruces Police Department, New Mexico)

U.S. District Court
ELEVENTH
AMENDMENT
SOVEREIGN IMMUNITY

Williams v. Beltran, 569 F.Supp.2d 1057 (C.D.Cal. 2008). A state inmate brought an action against a prison, alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) by forcing him to shave his beard, which he had worn for religious reasons. The district court dismissed the case. The court held that RLUIPA unambiguously conditions receipt of federal prison funds on the waiver of Eleventh Amendment sovereign immunity, and the remedial clause in RLUIPA providing for "appropriate relief" was not sufficiently broad to waive state sovereign immunity from money damages. The court noted that there are three main exceptions to the broad grant of sovereign immunity under the Eleventh Amendment: first, Congress may authorize such a suit in the exercise of its power to enforce the Fourteenth Amendment; second, a state may waive its sovereign immunity by consenting to suit; and third, suit may be brought to enjoin a state official rather than against the state itself. The court concluded that California had not waived its Eleventh Amendment immunity from money damages under RLUIPA and absent the availability of monetary relief, the plaintiff lacked any remedy for his alleged RLUIPA claim. (California State Prison Lancaster)

2009

U.S. District Court
ELEVENTH
AMENDMENT

Austin v. Taylor, 604 F.Supp.2d 685 (D.Del. 2009). A state prisoner brought an action alleging a § 1983 claim for inadequate medical care in violation of the Eighth Amendment and a state law medical negligence claim against a medical service corporation under contract with the state to provide healthcare services at a prison. The district court dismissed the case in part. The court held that the corporation that provided prison healthcare was not a state actor entitled to Eleventh Amendment immunity on the state prisoner's § 1983 claim. The court noted that despite having been named in hundreds of § 1983 actions, the corporation had never been held to be an arm of the state for Eleventh Amendment purposes. The court noted that the corporation was an autonomous actor and was not immune from state taxation, and any judgment against the corporation would not be paid from the state treasury. According to the court, although the corporation could not be held liable for allegedly medically negligent acts of an employee under the theories of respondeat superior or vicarious liability, the corporation could be directly liable for acts of the employee if the employee's acts were deemed the result of the corporation's policy or custom that was so likely to result in the violation of constitutional rights that the corporation could reasonably be said to have been deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment.

The court noted that a "policy" of the corporation is made when a decision-maker possessing final authority to establish a policy with respect to an allegedly violative action issues an official proclamation, policy or edict. According to the court, the "custom" of the corporation can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as to virtually constitute law. (Howard R. Young Correctional Institution, Wilmington, Delaware)

U.S. District Court
QUALIFIED IMMUNITY

Bailey v. Pataki, 636 F.Supp.2d 288 (S.D.N.Y. 2009). Convicted sex offenders brought an action against state officials, alleging that their involuntary psychiatric commitment deprived them of constitutional due process protections. The defendants moved to dismiss for failure to state a claim, or, in the alternative, for a stay pending resolution of certain pending state court proceedings. The district court denied the motion. The court held that the allegations of the convicted sex offenders were sufficient to state a procedural due process claim against state officials for deprivation of the offenders' liberty interests in not being confined unnecessarily for medical treatment. The offenders alleged that: (1) they were involuntarily transferred to state-run mental institutions based on the certification of doctors designated by the New York State Office of Mental Health and the New York Department of Correctional Services, instead of independent, court-appointed doctors; (2) that some were never served with a notice of petition for their involuntary commitment; (3) that notice was not provided to any of the offenders' friends and family; (4) and that they were not provided an opportunity to request a pre-commitment hearing and an opportunity to be heard. The court found that the procedural due process rights of the convicted sex offenders, to certain pre-transfer procedural safeguards, including notice, an opportunity to be heard, and a psychiatric evaluation by court-appointed doctors, was clearly established at the time of their involuntary commitment and transfer from prison to a mental hospital, so as to preclude any claim of qualified immunity on the part of New York officials. The court noted that the offenders were certified for involuntary commitment after being examined for short periods of time lasting no more than 20 minutes, and once certified, all six offenders

were transported in handcuffs and shackles where they were broadly evaluated for treatment. (New York State Office of Mental Health, New York Department of Correctional Services)

U.S. District Court
SOVEREIGN IMMUNITY

Boyd v. Nichols, 616 F.Supp.2d 1331 (M.D.Ga. 2009). A female, who had been housed in a jail for violation of her probation, brought an action against a former jailer, county, and former sheriff, under § 1983 and state law, relating to the sexual assault of the inmate by the jailer. The county and sheriff moved for summary judgment and the district court granted the motions. The court held that the sheriff was not “deliberately indifferent” to a substantial risk of serious harm to the inmate under the Eighth Amendment or the Georgia constitution in failing to protect the inmate from sexual assaults by a jailer, absent evidence that the sheriff had knowledge or indication that the jailer was a threat or danger to inmates, or that male guards, if left alone with female inmates, posed a risk to the inmates' health and safety. The court noted that the sheriff's actions in calling for an investigation and terminating the jailer's employment upon learning of the jailer's actions was not an “indifferent and objectively unreasonable response” to the inmate's claims, and thus, there was no violation of the inmate's rights.

The court held that the jail's staffing did not pose a “substantial risk of serious harm” to the inmate who was sexually assaulted by a jailer, as required to show violation of the Eighth Amendment and Georgia constitution, absent evidence that the jail was inadequately staffed. According to the court, the county did not have a policy or custom of underfunding and understaffing the jail, as would constitute deliberate indifference to a substantial risk of serious harm to the inmate, and thus the county could not be liable under § 1983 to the inmate who was sexually assaulted by a jailer. The court found that the sheriff's failure to train deputies and jailers in proper procedures for escorting and handling female inmates did not support supervisory liability on the § 1983 claim of the inmate, where the sheriff had no knowledge of any prior sexual assaults at the jail or any problems with jailers improperly escorting and handling female inmates, and the jailer who committed the assault had been trained previously on how to interact with inmates and knew it was improper to have intimate contact with inmates. During the time period in question, the county did not have a policy prohibiting a male jailer from escorting a female inmate within the Jail. The court held that the county and sheriff had sovereign immunity from the state law claims of the inmate, absent evidence that such immunity had been waived by an act of the General Assembly. (Berrien County Jail, Georgia)

U.S. District Court
QUALIFIED IMMUNITY

Cabral v. County of Glenn, 624 F.Supp.2d 1184 (E.D.Cal. 2009). A pretrial detainee brought a § 1983 action against a city and a police officer alleging violations of the Fourth and Fourteenth Amendments and claims under California law. The city and officer filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, a psychotic and suicidal individual who collided with the wall of a safety cell and broke his neck, failed to plead that a police officer, who extracted the detainee from his holding cell and used a stun gun and pepper spray on him following an incident in which the detainee rubbed water from his toilet on his body, was deliberately indifferent to the detainee's need for medical attention, as required to state due process claim under § 1983. According to the court, the detainee failed to allege that the officer knew he was suicidal and was not receiving medical care, or that the officer attempted to interfere with the detainee's receipt of such medical attention. The court found that the detainee's allegations that the officer used a stun gun, a stun-type shield and pepper spray in an attempted cell extraction while the detainee was naked, unarmed and hiding behind his toilet were sufficient to state an excessive force claim under § 1983. The court denied qualified immunity for the officer, even though the detainee had not responded to the officers' commands to come out of his cell. The court noted that the law clearly established that police officers could not use a stun gun on a detainee who did not pose a threat and who merely failed to comply with commands. The court held that the detainee sufficiently pleaded that the city had a policy of using stun guns in such situations, as required to state a § 1983 Fourth Amendment excessive force claim against the city. The detainee alleged that nine months prior to his assault, a separate incident occurred that was similar. (City of Willows Police Department, California)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Cardinal v. Metrish, 564 F.3d 794 (6th Cir. 2009). A prisoner brought an action against a warden seeking monetary damages, as well as declaratory and injunctive relief. The prisoner asserted violations of the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the failure to provide him with kosher food which resulted in his not eating for eight days. The district court granted summary judgment in favor of the warden. The prisoner appealed. The court held that the warden was entitled to Eleventh Amendment immunity on the prisoner's claim seeking monetary damages for the alleged violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) for not providing him with kosher meals. According to the court, even though the state accepted federal funds for its prisons, RLUIPA did not contain a clear indication that receipt of federal prison funds was unambiguously conditioned on a state's consent to be sued for monetary damages. The court held that there was no evidence that the warden knew of and disregarded an excessive risk to the prisoner's health or safety, as required to support the prisoner's claim against the warden for deliberate indifference to his medical needs in violation of the Eighth Amendment based on failure to provide him with kosher food. (Hiawatha Correctional Facility, Michigan)

U.S. Appeals Court
QUALIFIED IMMUNITY

Dahl v. Weber, 580 F.3d 730 (8th Cir 2009). A former state prisoner filed § 1983 action against the Secretary of the South Dakota Department of Corrections (DOC) and two wardens, seeking money damages for unconstitutionally prolonged incarceration based on violation of the Ex Post Facto Clause by the DOC's retroactive withholding of the prisoner's mandatory good-time credits pursuant to a statute enacted after his sex offense was committed. The district court granted the secretary and one warden qualified immunity, but denied the other warden qualified immunity. The warden appealed. The appeals court reversed in part and remanded. The court held that although the prison warden accepted service of the state prisoner's habeas petition challenging the Department's withholding of good-time credits, the warden was entitled to qualified immunity from the prisoner's § 1983 claims for money damages for unconstitutionally prolonged incarceration. According to the court, at the time the warden accepted service he had no duty to review the prisoner's status to determine that he was entitled to be released, and the warden lacked unilateral authority to restore good-time credits and release the prisoner. (South Dakota Department of Corrections)

U.S. District Court
LEGISLATIVE
IMMUNITY

Deweese v. Haste, 620 F.Supp.2d 625 (M.D.Pa. 2009). A former deputy warden brought an action against a county, a county prison warden, a county commissioner, and members of the county's prison salary board, alleging that his position was eliminated in retaliation for his exercise of his First Amendment rights. The defendants moved for summary judgment and the district court granted the motion. The court held that the speech activities of the deputy warden, who provided information to the county district attorney regarding the prison's food services contract and reported misappropriation of inmate funds to a county commissioner, were conducted pursuant to his employment with the prison, precluding his First Amendment retaliation claims. The court noted that the employee handbook required the deputy warden to report any corrupt or unethical behavior or violations of rules or law. According to the court, the county prison board's proffered legitimate, non-retaliatory reason for eliminating the deputy warden's position--that the county was seeking to cut employment-related expenses and the position had been deemed expendable--was insufficient to show that the budget cuts were not for cause. The court held that the county commissioner was entitled to legislative immunity on the former deputy warden's First Amendment retaliation claim where the commissioner's actions of recommending and voting for elimination of the deputy warden's position, as part of an effort to reduce the county's budget, was squarely within the sphere of his legislative work. (Dauphin County Prison, Pennsylvania)

U.S. Appeals Court
QUALIFIED IMMUNITY

Drogosch v. Metcalf, 557 F.3d 372 (6th Cir. 2009). An arrestee brought a § 1983 action against a parole agent and others, alleging false arrest and unlawful detention in violation of the Fourth Amendment. The district court granted summary judgment in favor of the defendants on all claims but the one against the parole agent for unlawful detention. The district court denied the agent's motion for reconsideration and the agent appealed. The appeals court affirmed. The court held that the arrestee's 13-day confinement in jail without a probable cause hearing violated the Fourth Amendment. The court found that the parole agent was the person responsible for ensuring that the arrestee received a prompt probable cause hearing after his warrantless arrest for allegedly violating probation. The court held that the parole agent was not entitled to qualified immunity because he logged the arrestee into jail incorrectly as a parole violator, which ensured that the arrestee would not receive a prompt probable cause hearing. (Michigan Department of Corrections and Wayne County Jail, Michigan)

U.S. Appeals Court
QUALIFIED IMMUNITY

Fennell v. Gilstrap, 559 F.3d 1212 (11th Cir. 2009). A pretrial detainee brought a Fourteenth Amendment excessive force claim against a sheriff's deputy under § 1983. The district court entered summary judgment for the deputy and the detainee appealed. The appeals court affirmed. The court held that once the district court decided that the detainee had shown excessive force, it could not then find that the deputy was qualifiedly immune because his use of excessive force was not in violation of clearly established law. But the court found that the deputy's kick to the detainee's face, which resulted in fractures, did not constitute excessive force. The court noted that the deputy saw the detainee struggling with six other officers who were unable to restrain him, the detainee had not yet been secured when the deputy kicked him, the deputy intended to kick the detainee in the arm rather than the face, the detainee had grabbed the arm of another officer, and the officers made an immediate offer of medical care. (Georgia)

U.S. District Court
QUALIFIED IMMUNITY

Fleming v. Sharma, 605 F.Supp.2d 399 (N.D.N.Y. 2009). The wife of a deceased prisoner, individually and as administratrix of the prisoner's estate, brought an action under § 1983 against a prison physician and a medical director, alleging that the defendants were deliberately indifferent to the prisoner's serious medical needs in violation of his Eighth Amendment rights, and seeking loss of consortium as a result of the prisoner's death. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison physician and medical director were deliberately indifferent to the serious medical needs of the prisoner, who suffered from congestive heart failure, and who died while under the defendants' care. The defendants allegedly failed to provide the prisoner with medication to stabilize his heart condition, despite the recommendations of four different physicians that the prisoner be treated with the medication. According to the court, the prison physician and the medical director were not entitled to qualified immunity from the § 1983 claim brought by the wife where the very nature of the action called into question the reasonableness of the defendants' decision not to administer medication. (Mohawk Correctional Facility, New York)

U.S. District Court
ABSOLUTE IMMUNITY

Gilmore v. Bostic, 636 F.Supp.2d 496 (S.D.W.Va. 2009). A state prison inmate brought an action against a probation officer, the state parole board, and state correctional facility employees, asserting that his constitutional rights were violated by allegedly false information in his presentence report for a burglary conviction and in the prison file which resulted in the inmate's classification in the state penal system at a higher level than was appropriate and in a sex offender designation. The district court held that: (1) the board was entitled to absolute immunity; (2) employees were not liable in their official capacities on claims for compensatory relief but the employees sued in their individual capacities were liable; (3) the inmate stated a violation of a protected liberty interest in parole release under the state constitution; (4) the inmate stated a claim under the state constitution for violation of a protected liberty interest in not being required to undergo sex offender treatment; and (5) the inmate adequately alleged a physical injury required to recover for mental or emotional injury. (Kanawha County Adult Probation Department, West Virginia Board of Probation and Parole, Huttonsville Corr'l Center, West Virginia)

U.S. District Court
OFFICIAL CAPACITY
QUALIFIED IMMUNITY

Hardy v. District of Columbia, 601 F.Supp.2d 182 (D.D.C. 2009). Pretrial detainees, allegedly assaulted by fellow inmates, brought a suit against the former Director of the District of Columbia Department of Corrections and a former jail warden in both their official and individual capacities, and against the District of Columbia. The detainees sought damages under § 1983 for alleged Fifth and Eighth Amendment violations. The district court dismissed the case in part. The court held that the detainees' § 1983 official capacity claims against the former Director and former jail warden were redundant to the claims against the District of Columbia, warranting dismissal. The court noted that claims brought against government employees in their official capacity are treated as claims

against the employing government and serve no independent purpose when the government is also sued. The detainees alleged that before the scalding attacks that injured them, one of the very assailants had committed a similar scalding attack using water heated in an unguarded microwave, and that the locations where their assaults occurred were inadequately staffed with corrections officers and resulted in the assaults taking place without any officers in the vicinity. The court held that these allegations were sufficient to plead conditions of detention that posed a substantial risk of serious harm, as required to state a failure-to-protect claim against the Director of the District of Columbia Department of Corrections and the jail warden. The court found that the detainees' allegation that the Director and jail warden were deliberately indifferent to negligent supervision of correctional officers and lack of staff training, was sufficient to state a § 1983 failure to train claim violative of their due process rights. The detainees alleged that the warden and Director were at the top of the "chain of command" at the jail, that they had been aware of violence issues for many years, and that they had been instructed to take action against violence on numerous occasions. The district court denied qualified immunity for the Director and jail warden, noting that the detainees' due process rights against deliberate indifference were clearly established at the time of violent scalding attacks by fellow inmates. (District of Columbia Jail)

U.S. Appeals Court
ABSOLUTE IMMUNITY

Hart v. Hodges, 587 F.3d 1288 (11th Cir. 2009). A former federal prisoner brought an action against a state prosecutor, the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison, alleging violations of his constitutional rights by having him transferred from federal to state custody at the end of his federal sentence. The district court granted the defendants' motion for judgment on the pleadings on the ground they were entitled to absolute immunity. The plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prosecutor was entitled to absolute immunity for his role in the plaintiff's transfer. But the court held that the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison were not entitled to absolute immunity from liability under § 1983 and state law for causing the issuance of a second state warrant against the prisoner prior to his release from federal prison, and issuing a notice of surrender to the prisoner and threatening further prosecution following his release. The court noted that the general counsel's role as legal advisor to the DOC and the warden's role as chief jailer of the prison where the prisoner was incarcerated were not roles intimately associated with the judicial phase of the criminal process. (Jackson State Prison, Georgia Dept. of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Havard v. Puntner, 600 F.Supp.2d 845 (E.D.Mich. 2009). The guardian of a minor child, who was born in a county jail while her mother was incarcerated there, brought a § 1983 action against jail employees for injuries sustained during and immediately after the birthing process. The district court denied the employees' motion to dismiss. The court held that the minor child was a "person" within the Fourteenth Amendment at the time of her § 1983 claims against jail employees, for injuries allegedly sustained as a result of alleged unconstitutional conduct during and immediately after the birthing process. The child was allegedly injured by the employees' failure to provide medical attention to the mother in violation of the child's due process rights, such that the child was not in a hospital at the time of her birth, the physicians and the facilities of the hospital were not available to resuscitate her when she was born, and she was not resuscitated until she arrived at the hospital following transport from the jail, at which time she had no respiration or heartbeat. The court found that deputies and a nurse at the county jail were not entitled to qualified immunity from the § 1983 action brought on behalf of the minor child, where the constitutional duty to care for helpless infants who have newly come into the world, including the duty to care for them by anticipation, during the birthing process, was clearly established at the time of the birth. The court noted that the defendants allegedly left the mother in her cell for two hours even though they were aware that she was in active labor, crying out for help, and that, once called, paramedics did not arrive until the child was being delivered and did not have the equipment to resuscitate the child when she was delivered. (Wayne County Jail, Michigan)

U.S. District Court
ELEVENTH
AMENDMENT
SOVEREIGN IMMUNITY

Hughes v. Colorado Dept. of Corrections, 594 F.Supp.2d 1226 (D.Colo. 2009). A state prisoner brought a § 1983 action against the Colorado Department of Corrections (CDOC), the Colorado Parole Board, and the operator of a residential community corrections facility, alleging failure to adequately respond to the prisoner's mental health needs in violation of his constitutional rights and the Americans with Disabilities Act (ADA). The district court dismissed the complaint in part and denied dismissal in part. The court held that the prisoner's § 1983 claims against the Colorado Department of Corrections (CDOC) and the Colorado Parole Board were barred by the Eleventh Amendment, where Colorado had not waived Eleventh Amendment immunity, Congress had not abrogated state sovereign immunity for § 1983 claims, and both the CDOC and Board were state agencies. The court held that the prisoner's allegations of physical injury merely stemmed directly from his alleged mental illness and constituted only common manifestations of depression and anxiety, and thus were insufficient under the Prison Litigation Reform Act (PLRA) to state a claim for money damages against the CDOC and the Board for alleged ADA violations. According to the court, the prisoner's allegations were sufficient to plead a claim against the CDOC for discriminatorily denying the prisoner access to medical care in violation of Title II of the ADA. The prisoner alleged that the CDOC maintained a policy of assuring that inmates and parolees received required mental health treatment, that the CDOC intentionally failed to provide him mental health treatment while he was at the correctional facility, and that the CDOC denied his access to such treatment while on parole. The court noted that Title II of the ADA does not categorically bar a state parole board from making an individualized assessment of the future dangerousness of an inmate by taking into account the inmate's disability. (Sterling Correctional Facility, Independence House, Colorado)

U.S. District Court
SOVEREIGN IMMUNITY

Jennings v. Hart, 602 F.Supp.2d 754 (W.D.Va. 2009). The administrator of an inmate's estate brought an action against a sheriff and several other current or former officers in a county sheriff's department, alleging claims under § 1983 and a state wrongful death act for one officer's alleged wrongful denial of medical care to an inmate in the county jail. The district court denied the officers' motion to dismiss on the grounds of sovereign immunity. The district court held that the officers lacked the discretion to keep the inmate at the jail and deny her the oppor-

tunity to be seen by a neurologist or other medical professional for ten days following referral by a nurse practitioner. The officers allegedly ignored the inmate's repeated requests for help and worsening physical condition, including severe headaches, dizziness, pressure in her head, loss of appetite, and fluid drainage in her ears. By the time the officers contacted outside medical professionals, the inmate was suffering from brain abscesses and a stroke which led to her death. (Culpeper County Jail, Virginia)

U.S. District Court
QUALIFIED IMMUNITY

Jones v. Carroll, 628 F.Supp.2d 551 (D.Del. 2009). A former inmate brought a § 1983 action against prison employees, alleging that they failed to protect him from an attack by another inmate. The prison employees moved for summary judgment, which the district court granted. The inmate moved for reconsideration. On reconsideration, the district court found that summary judgment was precluded for certain issues. The court held that summary judgment was precluded by a genuine issue of material fact as to whether an inmate's medical condition after having been stabbed by another inmate excused his failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA). The court also found that a genuine issue of material fact as to whether the inmate told prison officials about the violent threats he received from another inmate, precluded summary judgment on the inmate's Eighth Amendment failure to protect claim brought under § 1983. The court held that prison officials were not entitled to qualified immunity in their individual capacities in the § 1983 action alleging that officials failed to protect the inmate from serious harm from another inmate in violation of the Eighth Amendment. The court noted that case law put officials on notice that failure to protect an inmate from violence at the hands of another inmate violated an inmate's Eighth Amendment rights. (James T. Vaughn Correctional Center, Delaware Correctional Center, Smyrna, Delaware)

U.S. Appeals Court
ABSOLUTE IMMUNITY

LeFrere v. Quezada, 588 F.3d 1317 (11th Cir. 2009). The personal representatives of a pre-trial detainee who died of alcohol withdrawal in a jail brought an action under § 1983 and state law against a county commission, sheriff, chief corrections officer, and jailer. The district court denied the corrections jailer's motion to dismiss and denied reconsideration. The jailer appealed. The appeals court affirmed, finding that the jailer was not entitled to absolute immunity under Alabama law. (Baldwin County Jail, Alabama)

U.S. Appeals Court
QUALIFIED IMMUNITY

Lewis v. Downey, 581 F.3d 467 (7th Cir. 2009). A federal prisoner in custody at a county jail filed a pro se § 1983 action, alleging jail guards' conduct in shooting him with a taser gun amounted to cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that a jail guard who stood by while another guard shot a taser gun at the inmate in response to a superior officer's order, after the inmate refused an order to get out of bed, could not be liable in the inmate's § 1983 excessive force claim, where the bystander guard had no realistic opportunity to stop the other guard from discharging the taser gun. The court held that the guard was not entitled to qualified immunity from liability for his use of a taser gun against the prisoner, where, at the time of the conduct, the prisoner was allegedly prone on his bed, weakened, and docile. According to the court, the guard allegedly used the taser without warning the prisoner first, and the prisoner allegedly did not have enough time to respond to the guard's order to get out of bed, so that no reasonable guard would think he was justified in using the taser gun under the circumstances as alleged. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Lopez v. Youngblood, 609 F.Supp.2d 1125 (E.D.Cal. 2009). Plaintiffs brought a class action against a county, sheriff, and former sheriff, seeking injunctive relief and damages for alleged violations of his federal and state constitutional rights resulting from strip and/or visual body cavity searches of detainees and inmates of the county jail. The district granted summary judgment in part and denied in part. The court held that the policy of the county sheriff's office of subjecting to strip search all pretrial detainees who are ordered released as a result of court appearances, upon their return from the courthouse and prior to their being returned to the county jail's general population for administrative reasons pending release, violated the detainees' Fourth Amendment rights. The court found that there was no evidence that pretrial detainees at the county jail were subjected to strip searches in small groups as a means of punishment, as required to establish that the strip searches violated the detainees' due process rights. According to the court, pre-arraignment arrestees were not similarly situated to post-arraignment detainees, such that the practice of providing privacy for pre-arraignment strip and/or visual body cavity searches, but not for such searches of post-arraignment detainees, did not violate equal protection, notwithstanding the contention that the interest in maintaining the privacy of one's body cavities was the same for both arrestees and detainees. The court held that the defendants were entitled to qualified immunity because, at the time the county sheriff's office maintained the policy allowing for group strip and visual body cavity searches of post-arraignment detainees of the county jail, it was not clearly established that such searches violated the detainees' Fourth Amendment rights. (Kern County Sheriff's Department, Central Receiving Facility, Ridgecrest, Mojave, and Lerdo facilities, California)

U.S. Appeals Court
QUALIFIED IMMUNITY

Martinez v. Beggs, 563 F.3d 1082 (10th Cir. 2009). A pretrial detainee's estate brought a § 1983 action against a sheriff, deputies, and board of county commissioners alleging violations of the Fourteenth Amendment for deliberate indifference to the detainee's serious medical needs after the detainee died while in police custody. The district court granted summary judgment in favor of the defendants on qualified immunity grounds. The plaintiff appealed. The appeals court affirmed. The court held that the arresting officers and custodial officers had no reason to suspect that the detainee, who was intoxicated, posed a risk of heart attack and death, as required to support a claim that the officers violated the Fourteenth Amendment by being deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Oklahoma)

U.S. Appeals Court
QUALIFIED IMMUNITY

McRaven v. Sanders, 577 F.3d 974 (8th Cir. 2009). The guardian of an incapacitated detainee brought a § 1983 action on behalf of the detainee against a supervising detention facility officer, a practical nurse, and other detention facility officers, alleging deliberate indifference to the detainee's medical needs. The district court denied

qualified immunity to the defendants and they appealed. The appeals court affirmed. The court held that the supervising officer could not have reasonably relied on the practical nurse's opinion that the detainee did not require hospitalization and, thus, was not entitled to qualified immunity. The court noted that the officer was aware of the cocktail of potent drugs the detainee had consumed and that circumstances strongly suggested he did not consume the drugs in prescribed dosages, the officer was aware the detainee exhibited symptoms of extreme intoxication, and the officer knew or reasonably should have known that the practical nurse based his assessment on the faulty assumption that the detainee was under the influence of alcohol, not drugs. The court held that summary judgment was precluded by genuine issues of material fact as to the deputies' and sergeant's subjective knowledge of the detainee's medical need, and the care that the nurse provided to the detainee. The court also found that a sergeant who was trained in cardiopulmonary resuscitation (CPR) and who made no attempt to resuscitate the detainee was not entitled to qualified immunity, since the sergeant was aware of the detainee's medical need and was capable of providing assistance, but failed to do so. (Garland County Adult Detention Center, Arkansas)

U.S. Appeals Court
QUALIFIED IMMUNITY

Nelson v. Correctional Medical Services, 583 F.3d 522 (8th Cir. 2009). A state inmate brought a § 1983 action against the director of the Arkansas Department of Correction (ADC), and a corrections officer, alleging that while giving birth to her child she was forced to go through the final stages of labor with both legs shackled to her hospital bed in violation of the Eighth Amendment. The district court denied the defendants' motion for summary judgment. On rehearing en banc, the Court of Appeals affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections officer's conduct in forcing the inmate to go through the final stages of labor with both legs shackled to her hospital bed constituted "deliberate indifference" in violation of the Eighth Amendment. The appeals court held that the inmate, in the final stages of labor, had a "clearly established" right not to be shackled absent clear and convincing evidence that she was a security or flight risk, and thus a government official would not be protected from § 1983 liability for violating that right based on qualified immunity. (Arkansas Department of Correction, McPherson Unit)

U.S. District Court
ELEVENTH
AMENDMENT

Owens-Ali v. Pennell, 672 F.Supp.2d 647 (D.Del. 2009). A pro se state prisoner, a Moorish American National adherent, brought an action pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against prison officials, in their individual and official capacities, alleging that the officials violated his constitutional rights when they denied his request for a religious diet, and that the officials retaliated against him for his attempts to exercise his religious beliefs. The prisoner requested counsel. The court held that the prisoner's claims under § 1983 and RLUIPA for monetary damages against prison officials in their official capacities were essentially claims against the state, and thus those claims were barred by the state's Eleventh Amendment immunity. The court held that prison supervisory officials could not be held liable under § 1983 for alleged violations of the prisoner's constitutional rights in connection with his request for a religious diet absent a showing that those officials were aware of his allegations and remained "deliberately indifferent" to his plight. The court found that the prisoner's action was not so factually or legally complex that requesting an attorney to represent the prisoner was warranted. The court noted that the prisoner's filings in this case demonstrated his ability to articulate his claims and represent himself. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. Appeals Court
QUALIFIED IMMUNITY

Phillips v. Hust, 588 F.3d 652 (9th Cir. 2009). An inmate brought a § 1983 action against a prison librarian, claiming that her failure to allow him access to a comb-binding machine violated his First Amendment right of access to the courts. The district court granted summary judgment to the inmate, and after a bench trial, awarded the inmate \$1,500 in compensatory damages. A panel of the court of appeals affirmed, and the librarian's petition for a rehearing en banc was denied. The United States Supreme Court granted the librarian's petition for a writ of certiorari, vacated the panel opinion, and remanded. On remand, the appeals court reversed and remanded, finding that the librarian was entitled to qualified immunity. According to the court, it was objectively legally reasonable for the prison librarian to conclude that her denial of access to the comb-binding machine would not hinder the inmate's capability to file his petition for a writ of certiorari to the Supreme Court of the United States, and thus the librarian was entitled to qualified immunity from the inmate's § 1983 suit in light of the Supreme Court's flexible rules for pro se filings, which did not require and perhaps did not even permit comb-binding. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
QUALIFIED IMMUNITY
SOVEREIGN IMMUNITY

Poirier v. Massachusetts Dept. of Correction, 558 F.3d 92 (1st Cir. 2009). A discharged prison guard sued the Massachusetts Department of Corrections (DOC) and its commissioner under § 1983, claiming that a regulation prohibiting her from associating with present or former inmates violated her First Amendment associational rights and her Fourteenth Amendment due process rights. The district court dismissed the case and the prison guard appealed. The appeals court affirmed. The court held that the First Amendment associational and Fourteenth Amendment due process rights of the prison guard were not violated when she was discharged for violating a DOC regulation prohibiting non-approved association with a former inmate. The court found that the DOC's legitimate interest in preserving prison security was reasonably advanced by prohibiting a guard-former prisoner relationship, and that the DOC's interest outweighed the degree of intrusion into the guard's private life imposed by the regulation. The court held that the Massachusetts Department of Corrections (DOC) was entitled to sovereign immunity, and that the Commissioner of the DOC had qualified immunity from liability in the § 1983 claim because it was not clearly established that enforcement of the regulation would be an unlawful act. (Massachusetts Department of Corrections)

U.S. District Court
ABSOLUTE IMMUNITY
JUDICIAL IMMUNITY

Proctor v. Applegate, 661 F.Supp.2d 743 (E.D.Mich. 2009). State prisoners brought a § 1983 action against Michigan Department of Corrections (MDOC) employees and multiple prison facilities, alleging violations of their constitutional rights. The defendants moved to dismiss on statute of limitations grounds and for failure to state a claim upon which relief could be granted. The district court granted the motion in part and denied in part. The court held that state prison regulations which permitted the confiscation of certain types of mail and prohibited

“copyrighting” of names served a legitimate and neutral government purpose, and thus did not violate the prisoners' constitutional rights. The court held that the prisoners' § 1983 claims against hearing officers relating to prison misconduct proceedings were barred by absolute judicial immunity. The court held that a prisoner's allegation in his complaint that an MDOC employee did not refer him for psychiatric treatment after he attempted to commit suicide sufficiently stated a § 1983 claim for an Eighth Amendment violation based on denial of medical treatment. (Michigan Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Ramsey v. Goord, 661 F.Supp.2d 370 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging due process violations in connection with a disciplinary hearing and violations of his constitutional rights relative to his temporary removal from a kosher cold alternative diet (CAD) program. The employees moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether a state prison correction officers' captain, correction officer, and/or prison counselor were personally involved in the temporary removal of the Jewish prisoner from a kosher cold alternative diet (CAD) program. The court held that DOCS employees were not entitled to qualified immunity from the prisoner's § 1983 procedural due process claim that he was denied the opportunity to call witnesses and to hear and respond to evidence presented against him at a disciplinary hearing. The court noted that at the time of the hearing, it was clearly established that the prisoner was entitled to advance written notice of disciplinary charges, an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense, and a written statement by a fact finder of evidence relied on and reasons for the disciplinary action. (Southport Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED IMMUNITY

Sanchez v. Pereira-Castillo, 590 F.3d 31 (1st Cir. 2009). A state prisoner brought a § 1983 claims against correctional officials, a prison warden, a prison's correctional officer, and a physician, and medical battery and medical malpractice claims against the physician, relating to strip searches, x-rays, rectal examinations, and exploratory surgery to detect and recover suspected contraband. The district court dismissed the suit and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the digital rectal examinations were not unreasonable where the procedures were the direct culmination of a series of searches that began when a metal detector used to scan the prisoner's person gave a positive reading, the prisoner had two normal bowel movements before the searches were conducted, a physician examined him upon arrival at the hospital and found him to be asymptomatic, and several lab tests were found to be “within normal limits.” The court found that the exploratory surgery of the abdomen of the prisoner was unreasonable where the surgery required total anesthesia, surgical invasion of the abdominal cavity, and two days of recovery in the hospital. The court noted that the surgery was conducted despite several indications of the absence of contraband, including the results of two monitored bowel movements and two rectal examinations. The court found that correctional officers' conduct, in forcing the prisoner to undergo an invasive abdominal surgery, was a violation of a clearly established constitutional right, such that the officers were not entitled to qualified immunity from § 1983 liability. (Bayamón 501 Unit of the Commonwealth of Puerto Rico Administration of Corrections, and Río Piedras Medical Center)

U.S. District Court
QUALIFIED IMMUNITY

Shepard v. Peryam, 657 F.Supp.2d 1331 (S.D.Fla. 2009). A pro se inmate at a county jail, who professed to follow the Muslim faith, brought a § 1983 action against a former county sheriff, the jail's director of program services, and the jail's former and current directors of food services, alleging that the defendants' acts or omissions abridged his First Amendment religious rights. The inmate sought preliminary injunctive relief. The district court granted the defendants' motion for summary judgment. The court held that: (1) the fact that organized Muslim religious services were not provided at the jail did not amount to deprivation of the inmate's rights under the Free Exercise Clause; (2) the sheriff and the program services director were entitled to qualified immunity from the inmate's claim that a policy restricting religious headwear violated the First Amendment; (3) the fact that Jewish inmates may have been permitted to wear religious headwear did not render the no-headwear policy unconstitutional; (4) a policy preventing inmates' use of non-breakaway prayer beads did not violate the inmate's First Amendment rights; (5) a policy banning the possession of prayer rugs by inmates did not violate the inmate's First Amendment rights; (6) the revocation of the inmate's Kosher diet due to his non-compliance with that diet did not constitute a violation of his First Amendment rights; and (7) the inmate was not entitled to preliminary injunctive relief. The court noted that the jail depends entirely on volunteer religious leaders and there were no volunteer leaders from the Muslim faith. (Monroe County Detention Center, Florida)

U.S. Appeals Court
SOVEREIGN IMMUNITY

Sossamon v. Lone Star State of Texas, 560 F.3d 316 (5th Cir. 2009). A prison inmate brought a civil rights action challenging prison officials' refusal to allow him to participate in religious services while he was on cell restriction, and refusal to make a chapel available for religious services due to security concerns allegedly presented by holding such services in the chapel. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court dismissed as moot in part, reversed in part, affirmed in part and remanded. The court held that the state-wide cessation, in all correctional facilities in Texas, of the policy of preventing general-population prisoners on cell restriction from attending religious services had the effect of mooted the civil rights claim. The court found that the Religious Land Use and Institutionalized Persons Act (RLUIPA) did not create an individual-capacity cause of action in favor of the prison inmate against prison officials who had denied him access to a prison chapel. According to the court, RLUIPA did not provide clear notice that, by accepting federal funds, the state was waiving its sovereign immunity from liability for such monetary damages. The court held that summary judgment was precluded by genuine issues of material fact on the inmate's claims for injunctive relief challenging the denial of access to a chapel. The inmate alleged that his exercise of religion was substantially burdened because he could not use the prison chapel where he could kneel in front of an altar in view of a cross, and due to his being able to attend religious services only at other locations in the prison that were not specifically designed for Christian worship. (Robertson Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
ABSOLUTE IMMUNITY

Thomas v. City of Peoria, 580 F.3d 633 (7th Cir. 2009). An arrestee who was stopped by a city police officer for a traffic violation and arrested after the officer mistakenly identified him as an individual who had nine unpaid parking tickets and a warrant out for his arrest, brought a § 1983 action against the city and a prosecutor seeking relief on behalf of a class of similarly situated individuals who had been arrested by the city for parking violations. The arrestee alleged that the city had an unconstitutional policy of arresting people for not paying their parking tickets. The district court granted the defendants' motions for summary judgment. The arrestee appealed. The appeals court affirmed. The court held that the fact that an otherwise reasonable arrest was not for an "arrestable" offense would not make it unconstitutional, that an arrest for a "nonjailable" offense would not violate the Fourth Amendment, and the prosecutor was entitled to absolute immunity from damages for her action in filing motion for an arrest warrant. (City of Peoria, Illinois)

U.S. Appeals Court
SOVEREIGN IMMUNITY

Van Wyhe v. Reisch, 581 F.3d 639 (8th Cir. 2009). Two inmates each brought an action against state prison officials, asserting various claims of interference with their free exercise of religion under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the officials' motions for summary judgment in part, and the officials appealed. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals court held: (1) the section of RLUIPA protecting inmates from imposition of substantial burdens on their religious exercise not justified by compelling state interests was a valid exercise of Congress's Spending Clause authority; (2) the section of RLUIPA conditioning a state's acceptance of federal funds on its consent to suit for appropriate relief did not unambiguously encompass monetary damages so as to effect a waiver of sovereign immunity from suit for monetary claims by acceptance of the federal money; (3) the section of RLUIPA protecting inmates from substantial burdens on religious exercise was not a statute prohibiting discrimination within the meaning of the Civil Rights Remedies Equalization Act of 1986 (CRREA); (4) the inmate made a threshold showing of a substantial burden on his religious exercise by alleging that officials denied his request to possess and use a succah and that the succah was a mandatory part of the Sukkot Festival and essential to the practice of his Jewish faith; but (5) the officials did not substantially burden the inmate's religious exercise by denying his request for additional weekly group religious and language study time; and (6) the officials did not substantially burden the inmate's religious exercise by denying his request to have and use a tape player in his cell for religious language studies. The court noted that RLUIPA promoted the general welfare by furthering society's goal of rehabilitating inmates and respecting individual religious worship. (S. Dakota State Penitentiary)

U.S. District Court
QUALIFIED IMMUNITY

Wesolowski v. Washburn, 615 F.Supp.2d 126 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against corrections employees, alleging that the employees violated his rights by interfering with his ability to send outgoing mail. The employees moved for summary judgment and the district court granted the motion. The court held that the employees did not violate the prisoner's right of access to the courts protected under the First Amendment when they correctly determined that certain mail did not qualify as "legal mail" under applicable corrections department regulations, and rejected certain letters and other items that the prisoner sought to mail because of his noncompliance with the regulations. The court noted that, at most, the prisoner was inconvenienced and had some delays in his outgoing mail. The court held that the employees did not violate the prisoner's right to the free flow of mail as protected under the First Amendment when they correctly determined that certain mail did not qualify as "legal mail" and rejected certain letters and other items. According to the court, all the employees did was to require the prisoner's compliance with regulations concerning outgoing mail. The court found that even if the employees had incorrectly determined that some of the prisoner's outgoing mail was not legal mail, and thus did not qualify for free postage, employees were entitled to qualified immunity from the prisoner's § 1983 action because the employees did not violate any of the prisoner's clearly established rights of which a reasonable person in the employees' position would have known. (Southport Correctional Facility, New York)

2010

U.S. Appeals Court
QUALIFIED IMMUNITY
REASONABLE BELIEF

Aldini v. Johnson, 609 F.3d 858 (6th Cir. 2010). A detainee brought a § 1983 excessive force case against four corrections officers, arising out of a beating which occurred while the detainee was being held in a booking room pending completion of the booking process, but after he had been surrendered to jailers by his arresting officer. The district court granted summary judgment to two of the officers based on qualified immunity. The detainee, and the officers whose motions for summary judgment were denied, appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that the district court's error, in not applying the Fourth Amendment reasonableness test to the officer whose actions the court found violated the higher Fourteenth Amendment due process "shocks-the-conscience" standard, was harmless. (Montgomery County Jail, Ohio)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Betts v. New Castle Youth Development Center, 621 F.3d 249 (3rd Cir. 2010). A juvenile who had been adjudicated as delinquent brought an action against a residential maximum security center and several staff members for a spinal cord injury that occurred during a "pick-up" football game at the center. The district court granted summary judgment for the center and its staff. The juvenile appealed. The appeals court affirmed. The appeals court held that the district court did not err in granting Eleventh Amendment immunity to the youth development center, which was a detention facility for juveniles run by the Pennsylvania Department of Public Welfare (DPW), where the DPW was an administrative agency without existence apart from the Commonwealth. The court found that there was not a sufficient likelihood that serious harm would result from juveniles playing tackle football without protective equipment, as required for the juvenile to establish that the center and its officials violated his Eighth Amendment rights. (New Castle Youth Development Center, Pennsylvania)

U.S. District Court
QUALIFIED IMMUNITY

Brawley v. Washington, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion

for summary judgment, which the district court granted in part and denied in part. The court held that the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. District Court
ELEVENTH
AMENDMENT

Castle v. Eurofresh, Inc., 734 F.Supp.2d 938 (D.Ariz. 2010). A state prisoner brought a pro se action against a state, department of corrections, its current and former directors, and a company to which his services were contracted while in prison, asserting claims under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Arizona Civil Rights Act (ACRA). The court held that the state, the department of corrections, and its current and former directors had Eleventh Amendment immunity as to the prisoner's ADA disability discrimination claims relating to the tomato picking he performed for a private business through a prison program. The court found that the prisoner stated a claim under Title II of the ADA. Americans with Disabilities Act with allegations that: (1) the prison program under which prisoners picked tomatoes for a private business offered six times the wages paid for other prison jobs, as well as bonuses, and job skills not otherwise available; (2) that because of his disability, he was denied access to the program and the ability to obtain the benefits; and (3) that prison and state officials intentionally discriminated against him by denying and ignoring his requests for accommodations.

The court found that the private company that contracted with the state prison for prisoners to perform tomato picking on behalf of the company was not a "public entity" and, thus, it was not subject to Title II of the ADA. According to the court, the prisoner's allegations that state, prison, and state officials received direct federal financial assistance and therefore his claim stated a Rehabilitation Act claim against the state and these officials.

The court found that the prisoner's allegation that the private company that contracted with the state prison for prisoners to perform tomato picking on behalf of the company received an indirect financial benefit and competitive advantage from paying lower wages, was too vague and conclusory, as well as implausible, to satisfy the short and plain statement requirement for stating a claim that company violated the Rehabilitation Act. (Arizona Department of Corrections, Arizona Correctional Industries, Eurofresh)

U.S. District Court
LEGISLATIVE
IMMUNITY
JUDICIAL IMMUNITY

Clark v. Conahan, 737 F.Supp.2d 239 (M.D.Pa. 2010). A juvenile and his parents brought an action against juvenile court judges, a private attorney, juvenile probation staff, the owner of construction company, property owners, and others. They alleged that, in connection with a scheme to divert juvenile offenders to newly constructed privately-owned juvenile detention facilities in return for kickbacks, the defendants violated the juvenile's constitutional rights. The plaintiffs also alleged that the defendants engaged in a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, and alleged false imprisonment and intentional infliction of emotional distress (IIED). The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the judge was not entitled to immunity for his alleged non-judicial conduct and was not entitled to legislative immunity for budgetary actions he took in his role as president judge. The court held that the juvenile lacked standing to assert a Racketeer Influenced and Corrupt Organizations Act (RICO) action against the defendants because the juvenile asserted that he suffered great emotional distress and loss of earning capacity based on the education that he missed while in custodial detention, which did not demonstrate any concrete monetary loss. (Pennsylvania)

U.S. Appeals Court
QUALIFIED IMMUNITY

Colvin v. Caruso, 605 F.3d 282 (6th Cir. 2010). A state prisoner brought pro se action against prison officials, asserting that the prison's 16-day denial of kosher meals, multiple mistakes in administering the kosher-meal program, and the lack of Jewish services and literature at the prison, violated his constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's pro se claims for injunctive and declaratory relief under RLUIPA, challenging a particular prison's kosher meal program and the alleged denial of Jewish services and literature at the prison, were rendered moot by the prisoner's transfer to another prison. The court noted that the claims were directed specifically at the particular prison's policies and procedures, not at the state prison system's programs as a whole. The court found that the prison chaplain was entitled to qualified immunity from liability, where, consistent with his job function, he received the prisoner's request for kosher meals, checked the prisoner's eligibility, and was informed that the prisoner was a Muslim and therefore not eligible for kosher meals. Once the mistake was discovered, the chaplain and other prison officials worked as quickly as possible to ensure that the prisoner began receiving kosher meals. (Alger Maximum Correctional Facility)

U.S. District Court
QUALIFIED IMMUNITY

Dodge v. Shoemaker, 695 F.Supp.2d 1127 (D.Colo. 2010). A state prisoner brought a § 1983 action, proceeding in forma pauperis, against prison officials, alleging that she was raped by a lieutenant while incarcerated, and asserting various due process, equal protection, and Eighth Amendment violations. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issue of whether the state prisoner's placement in administrative segregation for a period of one year violated her due process rights could not be determined at the motion to dismiss stage of the prisoner's § 1983 action against prison officials, because of a factual dispute as to whether the duration of confinement was atypical and significant. According to the court, the contours of constitutional law were sufficiently clear that the state prison officials were on notice that assignment of a prisoner to administrative segregation under conditions that imposed a significant and atypical hardship in relation to the ordinary incidents of prison life could give rise to a liberty interest protected by due process, and, thus, the officials were not entitled to qualified immunity in the prisoner's § 1983 action, with respect to her due process claim. (Denver Women's Correctional Facility, Colorado)

U.S. Appeals Court
QUALIFIED IMMUNITY

Dunn v. Castro, 621 F.3d 1196 (9th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court denied the officials' motion to dismiss. The officials appealed. The appeals court reversed and remanded. The court held that the right of the prisoner to receive visits from his children was not clearly established and the officials were entitled to qualified immunity. The court noted that the restriction was temporary and the prisoner had violated prison rules by participating in a sexually-oriented telephone call involving a minor. (Corcoran State Prison, California)

U.S. District Court
ELEVENTH
AMENDMENT

Durrenberger v. Texas Dept. of Criminal Justice, 757 F.Supp.2d 640 (S.D.Tex. 2010). A hearing impaired prison visitor brought an action against the Texas Department of Criminal Justice (TDCJ), alleging failure to accommodate his disability during visits in violation of the Americans with Disabilities Act (ADA) and Rehabilitation Act. The district court denied summary judgment for the defendants and granted summary judgment, in part, for the visitor. The court held that acceptance by the Texas Department of Criminal Justice (TDCJ) of federal financial assistance waived its Eleventh Amendment immunity from the prison visitor's action alleging disability discrimination in violation of the Rehabilitation Act, where the Act expressly stated that acceptance of federal funds waived immunity. The court held that summary judgment as to compensatory damages was precluded by a genuine issue of material fact as to the amount of damages suffered by the visitor by the prison's failure to accommodate his disability. The court found that a permanent injunction enjoining future violations of the Rehabilitation Act by the Texas Department of Criminal Justice (TDCJ) was warranted in the hearing impaired prison visitor's action alleging failure to accommodate, where TDCJ had not accommodated the visitor in the past, continued to not provide accommodations and gave no indication that it intended to provide any in the future. (Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
QUALIFIED IMMUNITY

Hardy v. 3 Unknown Agents, 690 F.Supp.2d 1074 (C.D.Cal. 2010). A state prisoner brought a § 1983 action against prison physicians, alleging that the physicians failed to provide adequate medical care, in violation of the Eighth Amendment, and that one physician retaliated against him for filing grievances, in violation of the First Amendment. The physicians moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner had an ear infection, constituting a serious medical need, while under the prison physician's care, and, if so, whether the physician was deliberately indifferent to that need. The court found that a state prison physician was not entitled to qualified immunity from the prisoner's § 1983 claim alleging that the physician provided inadequate medical care for his ear infection, where a reasonable physician would have understood that failure to examine and treat the prisoner's ear in response to his complaints about ear pain and difficulty hearing would violate the Eighth Amendment. According to the court, the state prison physician's prescribing of medication for the prisoner's psoriasis without actually examining the prisoner's back did not amount to deliberate indifference to the prisoner's serious medical needs, as would violate the Eighth Amendment. The court noted that whether or not the physician's prescribing of medication without a back examination was sound medical practice, it was hardly a failing of constitutional magnitude. The court held that the prison physician was not deliberately indifferent to the prisoner's serious medical needs, in violation of the Eighth Amendment, in refusing to approve a "lay-in" or reduction of duties based on the prisoner's back problems. The court found that the reasons given for the physician's decision, including lack of documentation as to whether the prisoner underwent back surgery and his observations of the prisoner, were reasonable. (California State Prison-Los Angeles County)

U.S. Appeals Court
QUALIFIED IMMUNITY

Harper v. Lawrence County, Ala., 592 F.3d 1227 (11th Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. According to the court, for the purposes of a jailer's claim of qualified immunity from the § 1983 claim that he was deliberately indifferent to the pretrial detainee's serious medical needs under the due process clause, it was clearly established at the time of the detainee's confinement that a jail official who was aware of, but ignored, dangers of acute alcohol withdrawal and waited for an emergency before obtaining medical care was deliberately indifferent to the inmate's constitutional rights. The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning a prior similar incident, satisfied the pleading standards for stating a § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. District Court
SOVEREIGN IMMUNITY

Jaundoo v. Clarke, 690 F.Supp.2d 20 (D.Mass. 2010). A state prisoner brought an action against various Massachusetts Department of Correction (DOC) and UMass Correctional Health Service (UMCH) officials and employees, alleging that the defendants unlawfully deprived him of necessary medical care by confiscating his crutches while he was incarcerated in a maximum security prison. The prisoner moved for leave to file an amended complaint. The district court granted the motion in part and denied in part. The court held that UMCH had sovereign immunity from the prisoner's proposed negligence and medical malpractice claims and that a UMCH employee had immunity from liability for her alleged negligence and medical malpractice, under the Massachusetts Tort Claims Act (MTCOA). The court held that the prisoner stated a deliberate indifference claim under § 1983 against a Massachusetts Department of Correction (DOC) employee, a correctional officer, by alleging that the officer intentionally created and submitted an incident report in which he falsely claimed that he had seen prisoner run-

ning, for the purpose of depriving the prisoner of his crutches. The court found that supervisory and failure to train claims were precluded, where officials and employees did not directly participate in the decision to deprive the prisoner of his crutches. (Massachusetts Department of Correction, UMass Correctional Health Service, MCI-Cedar Junction)

U.S. District Court
ABSOLUTE IMMUNITY
ELEVENTH
AMENDMENT

Johnson v. Deloach, 692 F.Supp.2d 1316 (M.D.Ala. 2010). A state prisoner brought a § 1983 action against prison supervisory officials and correctional officers, challenging the constitutionality of actions taken against him during his incarceration. The prisoner alleged that an officer, without justification, repeatedly slapped him about his face and head causing the back of his head to strike the wall, and the prisoner “became dazed and disoriented...” The officer allegedly stopped slapping the prisoner and then grabbed the prisoner around his throat and began choking him while shoving his back and head against the wall. The officer then allegedly stopped choking the prisoner, lifted the prisoner off the floor and slammed him to the floor causing his back, head and left leg to hit a pole protruding from the wall. According to the prisoner, two other officers watched these actions and failed to intervene. The district court granted summary judgment for the defendants in part and denied in part. The court held that state prison officials were absolutely immune from the prisoner’s § 1983 claims brought against them in their official capacities, since Alabama had not waived its Eleventh Amendment immunity, and Congress had not abrogated Alabama’s immunity. The court held that summary judgment was precluded by genuine issues of material fact regarding the need for the use of force against the state prisoner by a correctional officer and the amount of force used by the officer, as to whether the officer acted “maliciously and sadistically” to cause harm, and as to whether two other officers witnessed the use of excessive force and failed to intervene. The court noted that a correctional officer who is present at a scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force can be held personally liable under § 1983 for his nonfeasance. (Draper Correctional Facility, Alabama)

U.S. District Court
QUALIFIED IMMUNITY

Johnson v. Roberts, 721 F.Supp.2d 1017 (D.Kan. 2010). A former county jail inmate brought an action against a deputy, sheriff, and county board of commissioners, alleging use of excessive force when the deputy used a stun gun on the inmate. The district court granted summary judgment in favor of the defendants. The court held that the use of a stun gun to subdue the county jail inmate was reasonable and did not violate the inmate’s Eighth Amendment rights. The court noted that the inmate had placed a towel in front of a security camera in violation of a jail rule, and when deputies responded to the inmate’s cell to confiscate the towel and the inmate’s property box, the inmate refused to hand over the box and either dropped or threw the box to the floor and refused an order to pick it up, placing the deputy in the position of bending down to retrieve the box from directly in front of the non-compliant inmate. The court found that the use of a stun gun was not a clearly established violation of the Eighth Amendment at the time of the incident and thus the deputy, sheriff, and county board of commissioners were entitled to qualified immunity. The court noted that the deputy used the stun gun to ensure the inmate’s compliance with orders and not to punish the inmate. (Miami County Jail, Kansas)

U.S. District Court
MUNICIPAL IMMUNITY

Lum v. County of San Joaquin, 756 F.Supp.2d 1243 (E.D.Cal. 2010). An arrestee’s survivors brought an action against a county, city, and several city and county employees, alleging § 1983 claims for various civil rights violations and a state law claim for wrongful death arising from the arrestee’s accidental drowning after his release from the county jail. The defendants moved to dismiss portions of the complaint and the survivors moved for leave to amend. The district court granted the defendants’ motion in part and denied in part, and granted the plaintiffs’ motion. The survivors alleged that the city’s police sergeants made a decision to arrest the individual for being under the influence in public, despite lack of evidence of alcohol use and knowledge that the individual was being medicated for bipolar disorder, and to book him on a “kickout” charge so that he would be released from jail six hours later. The court found that the arresting officers, by taking the arrestee into custody, created a special relationship with the arrestee, similar to the special relationship between a jailer and a prisoner, so as to create a duty of care for the purposes of wrongful death claim under California law, arising from the arrestee’s accidental drowning following his release from the county jail. The court noted that it was foreseeable that the arrestee needed medical attention and that there was a risk posed by releasing him without providing such attention.

The court held that the county, city, and arresting officers were entitled to immunity, under a California Tort Claims Act section related to liability of public entities and employees for the release of prisoners, for the wrongful death of the arrestee, only as to the basic decision to release the arrestee from the county jail, but not as to the defendants’ ministerial acts after the initial decision to release the arrestee. The court noted that the arrestee had a lacerated foot, was covered with vomit and had trouble walking, and had a seizure while he was in a holding cell. The arrestee’s body was found floating in the San Joaquin River, approximately two miles west of the county jail, shortly after he was released. (San Joaquin County Jail, California)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Meza v. Livingston, 607 F.3d 392 (5th Cir. 2010). A parolee, who had never been convicted of a sex offense, brought an action against the Texas Department of Criminal Justice (TDCJ) and officials, alleging that defendants denied him due process when they imposed and enforced sex-offender conditions as part of mandatory supervision following his term of incarceration. The district court found that the procedural protections given to the parolee were constitutionally insufficient and ordered that the parolee be provided with an appropriate hearing. Cross-appeals were taken. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that: (1) the procedure provided by TDCJ to parolees who had never been convicted of a sex offense and faced possible sex offender registration and therapy violated due process; (2) a parolee subject to imposition and enforcement of sex-offender conditions as part of mandatory supervision was owed a hearing that meets due process requirements; (3) the state was not required to provide counsel to a parolee facing registration as a sex offender and sex therapy as part of mandatory supervision; and (4) TDCJ officials were not entitled to immunity under the Eleventh Amendment from the parolee’s claim for injunctive relief. (Texas Board of Pardons and Paroles, Texas Department of Criminal Justice—Parole Division)

U.S. Appeals Court
QUALIFIED IMMUNITY

Montanez v. Thompson, 603 F.3d 243 (3rd Cir. 2010). A state prisoner filed a § 1983 action against corrections officials, alleging that he was incarcerated beyond the expiration of his maximum term of imprisonment as the result of officials' deliberate indifference. The district court denied one official's motion for summary judgment based on qualified immunity. The official appealed. The appeals court reversed and remanded. The appeals court held that it had jurisdiction to review the district court's denial of the official's motion for summary judgment, and that the official was entitled to qualified immunity. According to the court, the state prison records specialist was entitled to qualified immunity in the prisoner's § 1983 Eighth Amendment claim, alleging that the records specialist was deliberately indifferent to the prisoner's unlawful incarceration beyond the expiration of his maximum term of imprisonment. The court noted that the records specialist responded quickly to the prisoner's requests for information about his commitment records, she communicated the prisoner's concerns to her supervisor, the sentencing judge, and the state Department of Corrections (DOC) central office, and there was no showing that she ever ignored the prisoner's claims or failed to follow established DOC policy. (Pennsylvania Department of Corrections, State Correctional Institution at Albion)

U.S. District Court
QUALIFIED IMMUNITY

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) *affirmed in part* 678 F.3d 500. The guardian of the estate of a pretrial detainee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a city and city police officers, alleging civil rights violations in connection with the detainee's arrest and subsequent release from custody without being provided access to mental health treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that city police officers were not entitled to qualified immunity from the § 1983 claim brought by the mother of the detainee, for unreasonably failing to provide the detainee with mental health care under the Fourth Amendment, as it was clearly established that pretrial detainees were entitled to mental health treatment for serious mental health conditions. On appeal (678 F.3d 500), the appeals court held that the arresting officer was entitled to qualified immunity. The district court also denied qualified immunity for the city police officer who released the detainee, where the law was clearly established that the officer could not release the detainee from custody in a manner that increased her risk of harm. (Chicago Police Department, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Qasem v. Toro, 737 F.Supp.2d 147 (S.D.N.Y. 2010). A female inmate brought a § 1983 suit against corrections officials regarding injuries suffered by the inmate at the hands of a corrections officer alleged to have sexually assaulted the inmate. The superintendent and deputy superintendent for security moved to dismiss claims that they were deliberately indifferent to the inmate's personal safety. The district court denied the motion. The court held that the inmate's allegations against the superintendent and deputy superintendent for security, claiming that they were deliberately indifferent to her rights and were responsible for creating or maintaining policies or practices that failed to prevent her from being repeatedly raped and assaulted by a corrections officer, stated a claim for 8th and 14th Amendment violations. The court noted that the complaint alleged that the officials were responsible for determining where inmates were to be housed and the assignment of guards, and in conjunction with another official, investigation and response to complaints of staff misconduct. The court found that the superintendent and deputy superintendent for security were not entitled to qualified immunity, given the extent of the alleged sexual abuse, the numerous warning signs alleged, and the number of questionable, if not unintelligible, decisions made with respect to the inmate during the course of an investigation. (Taconic Correctional Facility, New York)

U.S. District Court
ELEVENTH
AMENDMENT

Rupe v. Cate, 688 F.Supp.2d 1035 (E.D.Cal. 2010). A state prisoner brought an action against prison officials for violation of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials failed to accommodate his Druid religious practices and retaliated against him for protected activities. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's claims for damages under RLUIPA against state prison officials in their official capacity were barred by Eleventh Amendment sovereign immunity, since RLUIPA did not provide a clear statement requiring states to waive immunity from liability for money damages. According to the court, the issue of whether prison officials violated the prisoner's rights under the Free Exercise Clause by failing to reasonably accommodate his Druid religious faith could not be resolved at the motion to dismiss phase because of factual disputes as to what interest justified the officials' alleged failure, the existing and potential alternatives for Druid religious exercise, and the impact of requested accommodations on prison officials and other inmates. (Mule Creek State Prison, California Department of Corrections)

U.S. Appeals Court
GOVERNMENTAL
IMMUNITY

Smith v. County of Lenawee, 600 F.3d 686 (6th Cir. 2010). A female detainee's estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee's death while in the county's custody. The district court denied the parole agent's motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent's failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the "proximate cause" of the detainee's death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee's condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff's Department, and Michigan Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees

moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment. The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. The court found that even if a correctional officers' captain failed to thoroughly investigate the alleged incident in which one officer threw urine and feces on the prisoner to wake him up, such failure to investigate did not violate the prisoner's due process rights, since the prisoner did not have due process right to a thorough investigation of his grievances. According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired. The court held that there was no evidence that the state prisoner suffered any physical injury as result of an alleged incident in which a correctional officer spit chewing tobacco in his face, as required to maintain an Eighth Amendment claim based on denial of medical care. The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous. The court held that summary judgment was precluded by a genuine issue of material fact as to whether state correctional officers used excessive force against the prisoner in the course of his transport to a different facility. The court held that state correctional officers were not entitled to qualified immunity from the prisoner's § 1983 excessive force claim arising from his alleged beating by officers during his transfer to a different facility, where a reasonable juror could have concluded that the officers knew or should have known that their conduct violated the prisoner's Eighth Amendment rights, and it was clearly established that prison official's use of force against an inmate for reasons that did not serve penological purpose violated the inmate's constitutional rights. The inmate allegedly suffered injuries, including bruises and superficial lacerations on his body, which the court found did not constitute a serious medical condition. The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. Appeals Court
 QUALIFIED IMMUNITY

Townsend v. Jefferson County, 601 F.3d 1152 (11th Cir. 2010). A detainee who suffered a miscarriage at a county jail brought a civil rights action against the county, county sheriff, two deputies, and the nurse who had examined her. The district court denied the deputies' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court reversed and rendered. The court held that the injury suffered by the pregnant detainee who used crack cocaine daily and had a miscarriage at the county jail was not caused by any deliberate indifference to his serious medical needs by the deputies, in violation of due process. According to the court, the deputies knew that the detainee had spoken with a nurse at the jail who determined that the detainee's condition was not an emergency, and there was no evidence that the detainee's situation was so obviously dire that the deputies must have known that the nurse had grossly misjudged her condition. (Birmingham Jail, Jefferson Co., AL.)

U.S. District Court
 MUNICIPAL IMMUNITY
 QUALIFIED IMMUNITY

Wereb v. Maui County, 727 F.Supp.2d 898 (D.Hawai'i 2010). Parents of a pretrial detainee, a diabetic who died in custody, brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee died in a 2-cell police lockup. The court held that county police officers and public safety aids who did not interact with or observe the pretrial detainee not moving in his cell were not subjectively aware of the serious medical need of the detainee, and thus those officers and aids were not deliberately indifferent to that need, in violation of the detainee's due process rights. The court held that summary judgment as to the § 1983 Fourteenth Amendment deliberate indifference claim was precluded by a genuine issue of material fact as to whether county police officers who interacted with the pretrial detainee and/or a county public safety aid who did not see the detainee move around in his cell while she monitored him over video had subjective knowledge of the serious medical need of detainee, precluding summary judgment.

The court found that neither county police officers who interacted with the pretrial detainee, nor a county public safety aid who did not see the detainee move around in his cell while she monitored him over video, were entitled to qualified immunity from the § 1983 Fourteenth Amendment deliberate indifference claim brought by the detainee's parents, where at the time of the detainee's death, it was clearly established that officers could not intentionally deny or delay access to medical care. The court held that summary judgment was precluded on the § 1983 municipal liability claim by genuine issues of material fact as to whether the county adequately trained its employees to monitor the medical needs of the pretrial detainees, and, if so, as to whether the county's inadequate training of its employees was deliberately different, and as to whether inadequate training "actually caused" the death of the pretrial detainee. (Lahaina Police Station, Maui County, Hawaii)

U.S. Appeals Court
 QUALIFIED IMMUNITY

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that officers

used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a "shake down" of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate's allegation that the prison's maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

2011

U.S. District Court
QUALIFIED IMMUNITY

Alexander v. City of Muscle Shoals, Ala., 766 F.Supp.2d 1214 (N.D.Ala. 2011). A pretrial detainee sued a city, city police officers, jailers, a mayor, and city council members, asserting § 1983 claims alleging deliberate indifference to his serious medical needs and his health and safety. The court found that qualified immunity applied to bar the § 1983 liability of jailers for deliberate indifference to the serious medical needs of the pretrial detainee, because the detainee failed to argue against the qualified immunity defense. According to the court, once a defendant raises a defense of qualified immunity, the plaintiff bears the burden of establishing both that the defendant committed the constitutional violation and that the law governing the circumstances was already clearly established at the time of the violation, and the detainee failed to adequately respond to the qualified immunity defense. The court noted that the jailers did not contact medical professionals at the detainee's request for four days at most, and that the detainee, who complained that he was in pain, at that point had been without prescription pain medication to which he was addicted for at least three days. The court also noted that the detainee had already faked a suicide attempt to garner jailers' attention and had also been both combative and difficult. (City of Muscle Shoals Municipal Jail, Alabama)

U.S. Appeals Court
QUALIFIED IMMUNITY

Association for Los Angeles Deputy Sheriffs v. County of Los Angeles, 648 F.3d 986 (9th Cir. 2011). Current or former deputy sheriffs who had been charged with felonies, suspended, reinstated after suspension, and then discharged, brought § 1983 claims based on Fourteenth Amendment due process violations against the county, its board of supervisors, civil service commissioners, and sheriff. The deputies were joined by their union. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the former deputies appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that: (1) due process required that the deputies receive post-suspension hearings in addition to the limited procedures they received before their suspensions; (2) all four deputies adequately stated Monell claims against the county; (3) civil service commissioners were entitled to qualified immunity from the claims of the deputies who did not receive post-suspension hearings, although those claims could go forward against the sheriff and county supervisors; and (4) all individual defendants were entitled to qualified immunity from the § 1983 claims of the two deputies who received post-suspension hearings, as their right to a more substantial hearing was not clearly established at the time of the violations. (Los Angeles County, California)

U.S. District Court
QUALIFIED IMMUNITY

Bame v. Dillard, 637 F.3d 380 (D.C.Cir. 2011). Arrestees, who were arrested while protesting International Monetary Fund (IMF) and World Bank policies in the District of Columbia, brought a *Bivens* action against a former United States Marshal, alleging that they had been subjected to unconstitutional strip searches upon being processed into holding cells at a courthouse. The arrestees moved for summary judgment as to liability, and the Marshal moved for summary judgment on the issue of qualified immunity. The district court denied those motions. On appeal, the appeals court reversed and remanded. The court held that there was no clearly established constitutional prohibition of strip searching arrestees without individualized, reasonable suspicion. According to the court, strip searching of all male arrestee demonstrators or protestors engaged in civil disobedience, in a locality that had a persistent problem with contraband being smuggled into a cellblock, prior to their commingled placement in holding cells, without individualized, reasonable suspicion had not been prohibited by the Fourth Amendment at the time of the incident, and therefore the supervising United States Marshal was entitled to qualified immunity. (United States Marshal for the Superior Court of the District of Columbia)

U.S. District Court
SOVEREIGN
IMMUNITY

Barrington v. New York, 806 F.Supp.2d 730 (S.D.N.Y. 2011). A prisoner brought a § 1983 action against correctional officers and a state, alleging violation of his constitutional rights as the result of an assault from officers in retaliation for filing grievances about disciplinary actions taken against him. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the state was entitled to sovereign immunity. The court found that the prisoner's § 1983 excessive force suit against correctional officers in their individual capacities did not implicate a rule against double recovery, under New York law, despite the officers' contention that the prisoner had already won an excessive force suit in state court against the officers in their official capacities and now wanted "a second bite at the apple." The court noted that there was no court in which the prisoner could have brought both an excessive force claim under state law against the state and the officers in their official capacities and a § 1983 claim against the officers in individual capacities for which punitive damages were available. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's filing of a grievance was the motivating factor for the alleged assault by the correctional officers. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED IMMUNITY

Braun v. Maynard, 652 F.3d 557 (4th Cir. 2011). Prison employees brought a § 1983 action against prison officials, alleging that a search using a portable ion scanning machine violated their Fourth Amendment rights. The district court granted the officials' motion to dismiss and the employees appealed. The appeals court affirmed. The court held that it was not clearly established that the use of an ion scanning machine to detect drugs and other chemicals could not create reasonable suspicion to justify a strip search, and therefore, prison officials were entitled to qualified immunity from the § 1983 action by prison employees alleging that a strip search following a

positive scan violated the Fourth Amendment. The court found that it was not clearly established that the Fourth Amendment was violated by strip searches of prison employees conducted in a restroom with a same-sex prison officer following a positive test from an ion scanning machine that could detect drugs and other chemicals, and therefore, officers and officials were entitled to qualified immunity in the employee's § 1983 action. (Maryland Correctional Training Center)

U.S. District Court
FTCA- Federal Tort Claims
Act
SOVEREIGN IMMUNITY

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception.

According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assailing inmate's central file proximately caused his injury. The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Cryer v. Massachusetts Dept. of Correction, 763 F.Supp.2d 237 (D.Mass. 2011). A Native American inmate brought a civil rights action against the Massachusetts Department of Correction and officials, challenging denial of access to ceremonial tobacco to be used for religious purposes. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the correctional anti-smoking policy which banned tobacco in all forms including ceremonial tobacco, created a substantial burden on the Native American inmate's religious practice, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that the conduct of state correctional officials in denying the Native American inmate's access to ceremonial tobacco did not violate a clearly established federal right of which a reasonable officer would have known, entitling the officials to qualified immunity on the inmate's § 1983 claim under the Free Exercise Clause of First the Amendment. The court noted that the policy of state correctional officials in denying the Native American inmate's access to ceremonial tobacco did not contravene a Massachusetts statute governing smoking in public workplaces, since the provision stated that smoking "may be permitted" in specifically enumerated places and circumstances, including religious ceremonies where smoking was part of a ritual. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. District Court
QUALIFIED IMMUNITY

Drumgold v. Callahan, 806 F.Supp.2d 405 (D.Mass. 2011). A former prisoner brought an action against former homicide detectives, a police commissioner, and a city for damages arising from his wrongful conviction and unlawful imprisonment for the murder of a twelve-year-old girl. Following a verdict against the detective in a second trial, the detective filed motions for judgment as a matter of law, for a new trial, and to reduce the jury award. The district court denied the motions. The court held that the detective was not entitled to qualified immunity for failing to turn over impeachment evidence to a prosecutor. The court held that an award of approximately \$1 million per year of the plaintiff's wrongful fourteen-year incarceration was not excessive in the suit against the detective who withheld impeachment evidence, and therefore a reduction in the award was not warranted. The court noted that the jury determined the value of non-economic damages. (City of Boston, Mass.)

U.S. District Court
GOVERNMENTAL
IMMUNITY
QUASI-JUDICIAL
IMMUNITY
SOVEREIGN IMMUNITY

Harbeck v. Smith, 814 F.Supp.2d 608 (E.D.Va. 2011). A former pretrial detainee brought a § 1983 action against a public defender, clerk of court, and deputy clerk of court, alleging that she was unlawfully imprisoned for 87 days after criminal charges against her were dismissed, in violation of her rights under Fourth and Fourteenth Amendments, and false imprisonment under Virginia law. The defendants moved to dismiss for failure to state claim. The district court granted the motions in part and denied in part. The court held that the detainee failed to state § 1983 and false imprisonment claims against public defender and that the public defender was entitled to governmental immunity against a legal malpractice claim. The court found that the detainee's allegations were sufficient to state a § 1983 claim against the clerk and that the clerk was not entitled to quasi-judicial immunity against the § 1983 claim and was not entitled to sovereign immunity against the negligence claim. The court also found that the detainee alleged necessary conduct by the clerk and deputy clerk to state a claim for punitive damages. According to the court, the allegations that the clerk of court received at least two letters notifying her that the pretrial detainee should be released, and that she still failed to take action to effectuate that release after criminal charges against the detainee were dismissed, were sufficient to allege the clerk's personal involvement in the detainee's continued detention. The court noted that the clerk's alleged inaction in procuring the detainee's release after criminal charges were dismissed was not a choice within the clerk's discretion and was not taken pursuant to the state court's direction. The court also held that the clerk of court failed in her execution of a ministerial duty, precluding her entitlement to sovereign immunity against the pretrial detainee's negligence claim, where the clerk received orders for detainee to be released, which the clerk's office was then required to notify the jail of the detainee's change in status so as to effectuate her release. (Hampton Roads Regional Jail, and Circuit Court of the City of Hampton, Virginia)

U.S. District Court
ABSOLUTE IMMUNITY
BIVENS CLAIMS

Hill v. Donoghue, 815 F.Supp.2d 583 (E.D.N.Y. 2011). An inmate, proceeding pro se, brought an action against an Assistant United States Attorneys (AUSA) and the United States, asserting various claims under Bivens and the Wiretap Act in relation to his jailhouse phone calls. The defendants filed a motion for judgment on the pleadings, which the district court granted. The court held that the AUSAs were entitled to absolute immunity from claims relating to their use of the tapes. The but court found that an AUSA was not entitled to absolute immunity for ordering the recordings, where the alleged order to make warrantless recordings of the inmate's jailhouse phone calls was investigative, rather than prosecutorial, and therefore, the AUSA was not entitled to absolute immunity from the inmate's Wiretap Act or Bivens Fourth Amendment claims. The court found that the inmate did not have a reasonable expectation of privacy in his jailhouse phone calls, and therefore, the warrantless recording of his calls did not violate his Fourth Amendment rights. The court noted that the jail telephones played a recorded warning that calls might be recorded and monitored, and the inmate's use of a jailhouse phone after hearing the warning constituted implied consent to the recording of his calls. (Eastern District of New York, Nassau County Correctional Center, New York)

U.S. District Court
QUALIFIED IMMUNITY

Johnson v. Government of Dist. of Columbia, 780 F.Supp.2d 62 (D.D.C. 2011). Female arrestees, who were arrested for non-drug and non-violent offenses, brought an action against the District of Columbia and a former United States Marshal for the Superior Court, among others, alleging that the defendants' blanket policy of subjecting them to "drop, squat, and cough" strip searches before presentation to a judicial official violated their rights to be free from unreasonable searches under the Fourth Amendment, and their rights to equal protection under the Fifth Amendment. The marshal moved for summary judgment. The court granted the motion in part and denied in part. The court held that the Marshal was entitled to qualified immunity from the Fourth Amendment claim and that there was no evidence that the Marshal implemented a policy that directed the blanket practice of strip searching female arrestees, as would support a Fifth Amendment claim, nor that the Marshal knew of a blanket practice of strip searching female arrestees. The court noted that the law at the time of the searches did not clearly establish that strip searching female arrestees prior to presentation to a judicial official violated the Fourth Amendment. (United States Marshal for the Superior Court of the District of Columbia)

U.S. District Court
ELEVENTH AMENDMENT
SOVEREIGN IMMUNITY

Keitt v. New York City, 882 F.Supp.2d 412 (S.D.N.Y. 2011). An inmate brought a pro se suit against a state, state agencies, a city, city agencies, and state and city officials, and corrections officers, claiming that he was dyslexic and that the defendants failed to accommodate his disability in the public school system and in education programs offered in juvenile detention facilities and adult correctional facilities, as well as in prison disciplinary proceedings. The court dismissed some claims and denied dismissal for other claims. The court held that the inmate's Individuals with Disabilities Education Act (IDEA) claims accrued for limitations purposes no later than the year in which he reached the age of 21, where under New York law, a child was no longer entitled to the protections and benefits of the IDEA after the age of 21 and did not have a right to demand a public education beyond that age. The court held that New York's continued acceptance of federal funds after 2001 waived its sovereign immunity with respect to the inmate's Rehabilitation Act claims arising after that date, where the state's continued acceptance of federal funds was a knowing relinquishment of its Eleventh Amendment immunity. The court ruled that the inmate's allegations suggested a discriminatory animus against him because of his alleged disability, dyslexia, and thus, Eleventh Amendment immunity did not apply to shield the state, state agencies and state employees from the inmate's ADA claims. (New York City Department of Correction- Rikers Island, State of New York Department of Correctional Services Elmira Correctional Facility, New York)

U.S. District Court
SOVEREIGN IMMUNITY

Maraj v. Massachusetts, 836 F.Supp.2d 17 (D.Mass. 2011). The mother of a deceased inmate brought an action, as administratrix of the inmate's estate, against the Commonwealth of Massachusetts, a county sheriff's department, a county sheriff, and corrections officers, alleging that the defendants violated the inmate's Fourth and Fourteenth Amendment rights. She also brought common law claims of wrongful death, negligence, and assault and battery. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the Commonwealth, in enacting legislation effectuating the assumption of county sheriff's department by the Commonwealth, did not waive sovereign immunity as to § 1983 claims filed against the Commonwealth, the department, and corrections officers in their official capacities after the transfer took effect. The court found that the correction officers who were no longer participating in the transfer of the inmate at the time inmate first resisted and the officers who took the first responsive measure by "double locking" the inmate's handcuffs were not subject to liability in their individual capacities as to the § 1983 substantive due process claim brought by inmate's mother arising from the inmate's death following the transfer.

According to the court, corrections officers who applied physical force to the resisting inmate during the transfer of the inmate, or were present when the inmate was unresponsive and requiring medical attention, were subject to liability, in their individual capacities, as to the § 1983 substantive due process claim brought by the inmate's mother. The court held that the county sheriff and corrections officers who participated in the transfer of the inmate, who died following the transfer, were immune from negligence and wrongful death claims brought by the inmate's mother under the Massachusetts Tort Claims Act (MTCA) provision which categorically protected public employees acting within the scope of their employment from liability for "personal injury or death" caused by their individual negligence. But the court found that the mother properly alleged that county corrections officers' contact with the inmate amounted to excessive force, and that a supervisor instructed the use of excessive force, as required to state a claim for assault and battery, under Massachusetts law, against the officers. (South Bay House of Correction, Suffolk County, Massachusetts)

U.S. District Court
ELEVENTH AMENDMENT
QUALIFIED IMMUNITY
QUASI-JUDICIAL
IMMUNITY

McBride v. Cahoone, 820 F.Supp.2d 623 (E.D.Pa. 2011). A state prisoner filed § 1983 action against his probation officer, and others, alleging violation of his constitutional rights after he was sent to prison for 83 days without a hearing for violation of his electronic monitoring program. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the state prisoner had a due process liberty interest in serving his sentence in home confinement; (2) his claim was not barred by *Heck v. Humphrey*; (3) the prisoner had standing to seek injunctive and declaratory relief; (4) the claim against the director of the state

probation and parole department was not barred by the Eleventh Amendment; (5) the probation officer was not entitled to qualified immunity; (6) the probation officer was not entitled to quasi-judicial immunity; and (7) the director of the state probation and parole department was not entitled to quasi-judicial immunity. The court noted that the prisoner pled guilty after a judge advised him repeatedly that if he accepted the government's plea offer, he would not serve any time in prison, but would carry out his sentence in electronically-monitored home confinement. (Delaware County Office of Adult Probation and Parole Services, Pennsylvania)

U.S. District Court
SOVEREIGN
IMMUNITY

Morton v. Bolyard, 810 F.Supp.2d 112 (D.D.C. 2011). A federal prisoner, who was employed by the Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody, brought a Bivens action against various federal officials, alleging that the defendants denied him promotions and back pay for his UNICOR job, and denied him good time credit for vocational training received through UNICOR and educational training he took at his own expense through a correspondence course. The defendants moved to dismiss. The district court granted the motion. The court held that sovereign immunity barred the prisoner's claims against the officials in their official capacities and that the district court lacked personal jurisdiction over the officials in their individual capacities. The court found that the prisoner failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), even though the prisoner had filed an administrative remedy request at the institutional level, where the prisoner had failed to file an administrative remedy request at the regional and central office levels, and the regional and central office levels had the authority to provide relief or to take action in response to the complaint. (U. S. Penitentiary Hazelton, West Virginia, Federal Prison Industries)

U.S. Appeals Court
QUALIFIED IMMUNITY

Noble v. Adams, 646 F.3d 1138 (9th Cir. 2011). A state inmate brought a § 1983 action against prison officials who were responsible for a post-riot lockdown of a prison, alleging that the lockdown resulted in denial of his Eighth Amendment right to outdoor exercise. The district court denied the officials' motion for summary judgment and subsequently denied the officials' motion for reconsideration. The officials appealed. The appeals court reversed and remanded with instructions. The appeals court held that the state prison officials were entitled to qualified immunity from the inmate's § 1983 claim that the post-riot lockdown of prison resulted in denial of his Eighth Amendment right to outdoor exercise because it was not clearly established at the time of the lockdown, nor was it established yet, precisely how or when a prison facility housing problem inmates must return to its normal operations, including outdoor exercise, during and after a state of emergency called in response to a major riot. (Corcoran State Prison, California)

U.S. District Court
QUALIFIED IMMUNITY

O'Neil v. Texas Dept. of Criminal Justice, 804 F.Supp.2d 532 (N.D.Tex. 2011). The next friend to a deceased prisoner's minor daughter who died of an asthma attack while confined brought a § 1983 action against the Texas Department of Criminal Justice (TDCJ), a prison doctor, the company that provided health care services at the prison, and others, alleging violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a picket officer, in failing to respond to the emergency call button of the prisoner who was suffering from an asthma attack and in refusing to respond to the cellmate's verbal calls to help the prisoner during an asthma attack, knew of a substantial risk of serious harm to the prisoner and failed to act with deliberate indifference to that harm. The court found that the officer was not entitled to qualified immunity. The court held that summary judgment on claims alleging violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA). Rehabilitation Act of 1973, was precluded by a genuine issue of material fact as to whether the Texas Department of Criminal Justice (TDCJ), in failing to put the prisoner who suffered from asthma on job restriction from temperature or humidity extremes, failing to allow the prisoner access to his medication on the day he died as the result of an asthma attack, and failing to provide the prisoner with periodic physician follow-up appointments, failed to accommodate the prisoner's disability. The court held that summary judgment on alleged violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) was precluded by a genuine issue of material fact as to whether the company that provided health care services at the prison, in failing to respond to emergency calls for help for the prisoner who suffered from asthma and failing to provide the prisoner with prompt medical attention on the day he died as the result of an asthma attack, failed to accommodate the prisoner's disability. (Jordan Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
QUALIFIED IMMUNITY

Ortiz v. City of Chicago, 656 F.3d 523 (7th Cir. 2011). A female arrestee's estate brought a civil rights action against a city and a number of its police officers, alleging claims arising out of the arrestee's denial of medical care and death during detention. The district court barred the proposed testimony of the estate's medical expert, and granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether it was objectively unreasonable for police officers to take no action to seek medical care for the arrestee, and as to whether the arrestee would not have died or experienced pain and suffering prior to her death had the police officers taken her to a hospital. The court held that remand was required for the district court to determine whether the medical expert's testimony that, assuming the arrestee died of a heroin overdose, she would have suffered less if she had been taken to the hospital, would help a jury understand whether the police officers' failure to take the arrestee to the hospital exacerbated her injury. According to the court, the police officers were not entitled to qualified immunity where it was clearly established at the time of arrestee's death that the Fourth Amendment protected a person's rights until she had had a probable cause hearing, and that providing no medical care in the face of a serious health risk was deliberate indifference. (Chicago Police Department 23rd District Lockup, Illinois)

U.S. Appeals Court
QUALIFIED IMMUNITY

Porter v. Epps, 659 F.3d 440 (5th Cir. 2011). A prisoner who was detained for 15 months beyond his release date as the result of a mistake by employees of the Mississippi Department of Corrections (MDOC) brought suit under § 1983 to recover for alleged violation of his due process rights. The district court denied a motion for judgment as a matter of law filed by the Commissioner of the MDOC on a qualified immunity theory, and the Commissioner appealed. The appeals court reversed, finding that the prisoner did not satisfy the burden of showing that failure

on the part of the Commissioner of the MDOC to promulgate a policy to prevent such mistakes by his subordinates was objectively unreasonable in light of clearly established law. The court found that the prisoner failed to satisfy burden of showing that failure on the part of the Commissioner of the MDOC to train employees to prevent such mistakes was objectively unreasonable in light of clearly established law, and the Commissioner was qualifiedly immune from liability under § 1983 on a failure-to-train theory, given evidence that the employees of the MDOC's records department had all attended training sessions with a lawyer to ensure that they better understood court orders. According to the court, the fact that an employee erred in one instance did not show that the Commissioner's alleged actions in failing to train were objectively unreasonable. (Mississippi Department of Corrections, Intensive Supervision Program)

U.S. District Court
QUALIFIED IMMUNITY

Rivas v. Martin, 781 F.Supp.2d 775 (N.D.Ind. 2011). A female detainee brought a § 1983 action against a sheriff and jail officials, alleging they violated her right to due process by detaining her beyond their authority to do so. The district court denied the defendants' motion to dismiss. The court held that the detainee stated a § 1983 claim for violation of her right to due process by alleging that the sheriff and jail officials held her, after she had posted bond, without a probable cause determination for five days beyond the 48 hour limit in her immigration detainer. The court found that the defendants were not entitled to qualified immunity because the defendants allegedly violated the detainee's clearly established constitutional rights. (LaGrange County Jail, Indiana)

U.S. District Court
QUALIFIED IMMUNITY

Roberts v. Klein, 770 F.Supp.2d 1102 (D.Nev. 2011). A Black state prisoner filed a civil rights action against prison administrators and employees alleging violation of his First Amendment right to free exercise of religion, his statutory rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Equal Protection Clause. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner stated a claim that prison officials and employees violated his religious rights under the First Amendment, RLUIPA, and the Equal Protection Clause on allegations that they implemented and enforced a policy that denied him kosher meals because his Jewish faith had not been verified by an outside entity, and the prison did not show that there was valid rational connection between the prison regulation and a legitimate government interest. The court found that the prisoner stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion, on allegations that he sincerely believed that he must attend religious services and his work assignment was terminated soon after he attended Jewish services, after which the employee stated that "You're no damn Jew," "You're right I'm firing you," and "Around here I'm your God." According to the court, the prisoner also stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion and deprived him of Equal Protection under Fourteenth Amendment, on allegations that he was written up on disciplinary charges for attending Jewish services, as a protected activity, while white inmates of the Jewish faith were not written up on disciplinary charges for attending services, and that he was placed on disciplinary charges two days later because he attended the services. The court held that the prison employees were not entitled to qualified immunity. (Southern Desert Correctional Center, Nevada)

U.S. Appeals Court
PROSECUTORIAL
IMMUNITY

Schneyder v. Smith, 653 F.3d 313 (3rd Cir. 2011). A detainee who was being held as a material witness in a homicide prosecution brought a civil rights action against the prosecutor who secured her arrest warrant, alleging the prosecutor failed to have her released from custody knowing that her testimony was not required for several district court entered an order denying the prosecutor's motion for summary judgment, and the prosecutor appealed. The appeals court affirmed. The appeals court held that the prosecutor's conduct was sufficient to establish prima facie violation of the detainee's Fourth Amendment rights. According to the court, the detainee's Fourth Amendment right to be free from unreasonable seizures was clearly established and the prosecutor was not entitled to prosecutorial immunity. (Philadelphia, Pennsylvania)

U.S. District Court
ABSOLUTE IMMUNITY
PROSECUTORIAL
IMMUNITY

Tillman v. Burge, 813 F.Supp.2d 946 (N.D.Ill. 2011). A former prisoner, who served nearly 24 years in prison for rape and murder before his conviction was vacated and charges were dismissed, brought a § 1983 action against a city, county, police officers, police supervisors, and prosecutors, as well as a former mayor, alleging deprivation of a fair trial, wrongful conviction, a Monell claim, conspiracy under § 1985 and § 1986, and various state law claims. The defendants filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the former prisoner's allegations that police officers engaged in suppressing, destroying, and preventing discovery of exculpatory evidence, including instruments of torture used to coerce the prisoner's confession, stated a § 1983 claim against the police officers for a Brady violation, despite the officers' contention that the prisoner was aware of everything that he claimed was withheld at the time of the trial. The court found that the former prisoner's complaint, alleging that municipal officials acted in collusion with a former mayor and a state's attorney and high-ranking police officials to deflect public scrutiny of the actions of police officers that suppressed and prevented discovery of exculpatory evidence, which prolonged prisoner's incarceration, stated a § 1983 claim against municipal officials for deprivation of fair trial and wrongful conviction. According to the court, a prosecutor was not entitled to absolute immunity from the § 1983 complaint by the former prisoner, alleging that the prosecutor personally participated in the prisoner's interrogation and that of a codefendant, and then suppressed the truth concerning those events. The court found that the allegation put the prosecutor's conduct outside the scope of his prosecutorial function. The court held that the complaint by the former prisoner, alleging that the former prosecutor encouraged, condoned, and permitted the use of torture against the prisoner in order to secure a confession, stated a § 1983 claim against the prosecutor for coercive interrogation, in violation of the Fifth and Fourteenth Amendments. The court noted that the allegations supported the inference that the prosecutor participated in an investigatory rather than a prosecutorial role. According to the court, the "Plaintiff's 46-page complaint sets forth an account of the murder of Betty Howard and Plaintiff's arrest and prosecution for that murder, including the torture he alleges he endured at the hands of Area 2 police officers. The complaint also details the history of torture at Area 2 and the alleged involvement of the various Defendants in that torture and in subsequent efforts to cover it up." (Cook County, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Bell v. Luna, 856 F.Supp.2d 388 (D.Conn. 2012). A state inmate brought a § 1983 action against prison officials and a prison doctor, alleging that the defendants subjected him to unconstitutional conditions of confinement and showed deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the state prison doctor was not deliberately indifferent to the inmate's health in failing to take sufficient measures to treat the inmate's joint and back pain, or in failing to prescribe the inmate with an analgesic cream, as would violate the inmate's Eighth Amendment rights. The court found that forcing the inmate to go nearly seven months with a torn, partially unstuffed, unhygienic mattress was a condition of confinement sufficiently serious to implicate the Eighth Amendment. According to the court, the inmate's allegations that a unit manager "willfully, wantonly, and maliciously disregarded" the inmate's repeated requests for an adequate and hygienic mattress stated a claim under § 1983 against the manager for cruel and unusual punishment in violation of his Eighth Amendment rights. The court held that the unit manager was not entitled to qualified immunity from the inmate's § 1983 claim where the law of the Second Circuit would have put the manager on notice at the time of the alleged violation that failing to provide the inmate with an hygienic, working mattress for over half a year ran afoul of the Eighth Amendment. (MacDougall-Walker Correctional Institution, Connecticut)

U.S. District Court
QUALIFIED IMMUNITY

Bentley v. Dennison, 852 F.Supp.2d 379 (S.D.N.Y. 2012). Parolees, on behalf of themselves and a presumed class, brought a § 1983 action against officials at a state's department of corrections and department of parole, alleging that the officials subjected them to unlawful custody by continuing to impose terms of post-release supervision (PRS) that had been declared unlawful, and arresting and re-incarcerating them for technical violations of those terms. The defendants moved to dismiss. The district court denied the motion, finding that the officials were not entitled to qualified immunity at the motion to dismiss stage, and that the parolees stated a § 1983 claim against each individual official. The officials' contended that the appeals court decision that found the practice to be unlawful created confusion about the appropriate remedy for parolees who had been given the terms unlawfully. The court held that the appeals court decision clearly established that the administrative imposition of mandatory PRS was unconstitutional, that the court clearly explained that the remedy for such a legal infirmity was that the term of PRS should be vacated and the state should be given the opportunity to seek appropriate resentencing, and the officials had an obligation to treat the appeals court decision as binding on all terms of administratively imposed PRS. (New York State Department of Correctional Services, Department of Parole)

U.S. District Court
QUALIFIED IMMUNITY

Colvin v. Caruso, 852 F.Supp.2d 862 (W.D.Mich. 2012). A state prisoner filed a § 1983 action against prison officials, asserting that the prison's 16-day denial of kosher meals, mistakes in administering the kosher-meal program, and lack of Jewish services and literature at the prison violated his constitutional rights and Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials, and denied prisoner's motion to amend and second motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand, the district court held that the prison's "zero tolerance" policy for possession of even one non-kosher food item violated the Free Exercise Clause and RLUIPA. But the court determined that the officials were entitled to qualified immunity where there had not been any determination that the regulation was in any way deficient at the time of the officials' actions. The court held that the prison's use of questionnaire about the inmate's knowledge of his designated religion was proper. According to the court, the officials' failure to reinstate the inmate to his kosher diet regimen violated the inmate's rights but punitive damages were not warranted. The court awarded \$1 in nominal damages where the inmate did not look like he missed many meals as a result of the officials' actions, and there was no evidence of physical injury. The court noted that even though the prison had economic interest in restricting kosher diet to prisoners who had a sincere belief that the diet was necessary to practice their religion, where the inmate had no other means of eating, there was no evidence that providing a modicum of flexibility would have a ripple effect on prison staff or inmates or would escalate the cost of providing kosher meals. (Michigan Department of Corrections, Alger Correctional Facility)

U.S. District Court
QUALIFIED IMMUNITY

Davis v. Powell, 901 F.Supp.2d 1196 (S.D.Cal. 2012). A state prisoner who was a Muslim brought a pro se § 1983 action against a prison warden and other prison employees for claims arising out of the prison's ban on prayer oil. The court held that allegations that a prison warden issued an addendum to a Department Operations Manual (DOM) that implemented a policy that only orders for certain religious items would be counted under the quarterly package program was sufficient to state First Amendment retaliation claim against warden. The court noted that: (1) the policy made it more burdensome to obtain items required for the inmate to practice his religion or practice it as easily as inmates of different faiths; (2) that there existed a causal link between the policy and his faith; (3) that his required religious oil was banned approximately five months after the inmate appealed the policy; (4) that the policy would chill a person of ordinary firmness from practicing his religion, and (5) that a legitimate penological interest was not furthered by the policy. The court found that the inmate's allegation that a prison warden enacted a policy which considered special orders for religious packages to be counted as quarterly packages for inmates, because of its adverse effects on plaintiffs of a particular religion, stated an equal protection claim. According to the court, the articles listed in the policy were those ordered by only prisoners of that religion. The court held that the warden and officials were not entitled to qualified immunity from the inmate's claim alleging a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), where a reasonable person in the position of the prison warden and related officials would believe that his or her conduct in enacting a policy banning the purchase and receipt of prayer oil by inmates for 14 months violated inmates' First Amendment right to freely exercise his or her religion and of the inmate's Equal Protection rights. (Calipatria State Prison, Calif.)

U.S. District Court
ABSOLUTE IMMUNITY
QUALIFIED IMMUNITY

Donahoe v. Arpaio, 869 F.Supp.2d 1020 (D.Ariz. 2012). In consolidated cases, members of a county board of supervisors, county staff, and judges of county courts, brought actions against members of county sheriff's office and county attorney's office, alleging various torts and constitutional violations. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that members of the county sheriff's office and county attorney's office were not entitled to absolute immunity in their filing of a federal Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuit against members of county board of supervisors, county staff, and judges of county's courts, where the RICO suit was far removed from the judicial phase of the criminal process, and there was no basis for governmental enforcement under RICO itself. According to the court, the county sheriff's and county attorney's voluntary dismissal of their RICO suit constituted termination in favor of the members of the county board of supervisors, county staff, and judges of county's courts, as required to support Arizona law claims against the sheriff and attorney for wrongful institution of civil proceedings. According to the court, numerous constitutional violations allegedly undertaken by the county attorney, the county sheriff, and their subordinates, were sufficiently egregious and voluminous to raise a fair inference of failure to train in relation to the § 1983 claims asserted by the plaintiffs. (Maricopa County Sheriff's Office and County Attorney's Office, Phoenix, Arizona)

U.S. District Court
ELEVENTH
AMENDMENT

Edmond v. Clements, 896 F.Supp.2d 960 (D.Colo. 2012). A parolee brought a civil rights action alleging that his constitutional rights were violated when he failed to receive a \$100 cash payment upon his release from a state prison to parole, and by state corrections officials' failure to perform a proper sex offender evaluation, which resulted in the parolee being improperly ordered to participate in sex offense treatment that included a requirement that he have no contact with his children. The defendants moved to dismiss. The district court granted the motion. The district court held that: (1) the private sex offender treatment program that contracted with the state and its employees did not qualify as "state actors," and thus, could not be liable in the parolee's § 1983 claim; (2) the claim against the executive director of the state department of corrections in his official capacity for recovery of a cash payment was barred by the Eleventh Amendment; (3) the executive director was not personally liable for the cash payable to the parolee upon release; (4) the officials were not liable under § 1983 for their alleged negligent supervision, failure to instruct or warn, or failure to implement proper training procedures for parole officers; (5) the parolee's equal protection rights were not violated; and (6) the allegations stated a due process claim against corrections officials. According to the court, allegations by the parolee that Colorado department of corrections officials failed to perform a proper sex offender evaluation prior to releasing him on parole, as required by Colorado law, which allegedly resulted in a parole condition that he have no contact with his children, stated a due process claim against the corrections officials. (Bijou Treatment & Training Institute, under contract to the Colorado Department of Corrections)

U.S. Appeals Court
QUALIFIED IMMUNITY

Estate of Miller, ex rel. Bertram v. Tobiasz, 680 F.3d 984 (7th Cir. 2012). The minor siblings of an inmate who committed suicide brought a § 1983 action against correctional facility staff members, alleging deliberate indifference to the inmate's serious medical condition involving a long history of suicide attempts, self-harm, and mental illness. The district court granted qualified immunity to the management-level defendants and others, but denied qualified immunity to an intake nurse, psychology associate, and prison guards. The defendants who were denied qualified immunity appealed. The appeals court affirmed. The appeals court held that the inmate's siblings adequately alleged that the intake nurse and a psychology associate were subjectively aware that the inmate was a suicide risk, as required to state a claim alleging deliberate indifference to the inmate's serious medical condition. The court found that the inmate's siblings adequately alleged that prison guards were subjectively aware that the inmate was a suicide risk. According to the court, the siblings adequately alleged that the intake nurse and psychology associate failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies, and that prison guards failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies. The court held that the intake nurse, psychology associate, and prison guards were not entitled to qualified immunity.

The court noted that the guards allegedly knew or should have known of the inmate's mental illness and suicide attempts because he was adjudicated mentally ill, he had court-ordered medications he refused to take the night he died, and he had a well-documented history of suicidal behavior. The inmate was housed in a unit where inmates in need of greater supervision were placed. The guards allegedly failed to call for medical attention despite finding the inmate with no pulse and not breathing on the floor of his cell with a white cloth wrapped around his neck, and waited to assemble an entry team and then applied restraints to the inmate before removing the ligature from around his neck. (Columbia Correctional Institute, Wisconsin)

U.S. District Court
QUALIFIED IMMUNITY

Facey v. Dickhaut, 892 F.Supp.2d 347 (D.Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Massachusetts)

U.S. District Court
QUALIFIED IMMUNITY

Glover v. Gartman, 899 F.Supp.2d 1115 (D.N.M. 2012). The personal representative of the estate of a pretrial detainee who committed suicide while in custody brought an action against a warden of a county detention center and corrections officers, alleging under § 1983 that the defendants violated his substantive due process rights when they provided him with razor blades and failed to respond in a timely manner to his emergency calls for help. The officers moved to dismiss for failure to state a claim. The district court granted the motion. The court held that a county corrections officer's act of providing the pretrial detainee with two razor blades and then leaving the detainee alone for over an hour so that detainee could shave before trial, during which time the detainee committed suicide, did not violate the detainee's substantive due process rights under the United States Constitution or the New Mexico Constitution, where the officer did not know that the detainee posed any suicide risk. The court also held that the officer was entitled to qualified immunity from the § 1983 claim that the officer violated the pretrial detainee's substantive due process rights, where there was no due process violation, as the officer did not know that the detainee posed any suicide risk, and a detainee's substantive due process right not to be left alone with razor blades was not clearly established at the time of the incident. The court also found that a corrections officer was entitled to qualified immunity from the § 1983 claim that the officer violated the substantive due process rights of the detainee by failing to respond to the detainee's calls for help. According to the court, the officer's conduct did not rise to the level of a due process violation, and the substantive due process right of the detainee to have an officer respond to a call was not clearly established absent evidence that the officer heard the call or knew of a suicide risk. (Lea County Detention Center, New Mexico)

U.S. Appeals Court
SOVEREIGN IMMUNITY
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Grayson v. Schuler, 666 F.3d 450 (7th Cir. 2012). A former state prisoner brought a § 1983 action against a correctional officer, alleging the forcible shearing of his dreadlocks violated the free exercise clause of the First Amendment. The defendant moved for summary judgment. The district court granted the motion. The former prisoner appealed. The appeals court reversed and remanded. The appeals court held that while the prisoner's Religious Land Use and Institutionalized Persons Act (RLUIPA) claim against the correctional officer in his official capacity was barred by the state's sovereign immunity, the officer was not entitled to qualified immunity. The court noted that the Act does not create a cause of action against state employees in their personal capacity. The court held that the taking of a Nazirite vow, which barred the cutting of hair, by the state prisoner who was a member of the orthodox African Hebrew Israelites of Jerusalem was religiously motivated, for purposes of the prisoner's claim that prison officials failed to accommodate his religious beliefs and thus violated the free exercise clause of the First Amendment. The court found that the officer was not entitled to qualified immunity because there was no suggestion that the officer who ordered shearing of prisoner's dreadlocks due to a reasonable belief that the prisoner was insincere in his religious beliefs, or was a security threat. (Big Muddy Correctional Center, Illinois)

U.S. Appeals Court
QUALIFIED IMMUNITY

Handt v. Lynch, 681 F.3d 939 (8th Cir. 2012). A detainee, who suffered a month-long incarceration following sentencing for operating while intoxicated, even though a state court had not ordered his incarceration, brought a § 1983 action against prison intake officers and a counselor. The district court denied the officers' and counselor's motion for summary judgment on the basis of qualified immunity, and they appealed. The appeals court vacated and remanded. The appeals court held that the district court failed to engage in a full qualified immunity analysis as to each of the detainee's § 1983 claims, setting aside the district court's order denying summary judgment to the prison intake officers and counselor on qualified immunity grounds. The court noted that, although the district court did an admirable job of explaining the facts of the case and construing those facts in the light most favorable to the detainee, the court nevertheless repeatedly stated in its analysis that there were material issues of fact in dispute, and its decision lacked consideration of the individual defendants' actions with respect to each of the constitutional claims. (Iowa Medical Classification Center, Oakdale, Iowa)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Hilton v. Wright, 673 F.3d 120 (2nd Cir. 2012). A state prison inmate infected with the Hepatitis C virus brought a class action against the New York State Department of Correctional Services and the Department's Chief Medical Officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving the injunctive and equitable claims. Defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. The appeals court vacated the district court's decision granting summary judgment to the Chief Medical Officer on the Eighth Amendment claim, due to the extreme brevity of the district court's opinion. The appeals court also vacated the district court's decision granting summary judgment on the ADA claim on the ground that the Eleventh Amendment precluded damages. (New York Department of Correctional Services)

U.S. Appeals Court
QUALIFIED IMMUNITY

Hydrick v. Hunter, 669 F.3d 937 (9th Cir. 2012). Sexual offenders who were civilly confined in a state psychiatric hospital under California's Sexually Violent Predators Act (SVP) filed a class action against various state officials under § 1983, challenging conditions of their confinement. The district court denied the defendants' motion to dismiss, and the defendants filed an interlocutory appeal. The appeals court affirmed in part and reversed in part. Certiorari was granted. The United States Supreme Court vacated and remanded. On remand, the appeals court held that the defendants were entitled to qualified immunity. According to the court, the civilly committed persons failed to plead plausible claims against the state hospital's administrators and supervisory officials in their individual capacities, and thus the administrators and officials were entitled to qualified immunity from liability for money damages under § 1983, where there was no allegation of a specific policy or custom that caused constitutional deprivations, and no specific allegations regarding each defendant's purported knowledge of deprivations. (Atascadero State Hospital, California)

U.S. District Court
QUALIFIED IMMUNITY

Jackson v. Gandy, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and such right was clearly established at the time of the officers' alleged misconduct. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner exhausted his administrative remedies regarding the excessive force claim against corrections officials in accordance with the requirements of the Prison Litigation Reform Act (PLRA). (N.J. Department of Corrections, Bayside State Prison)

U.S. District Court
QUALIFIED IMMUNITY

Joseph v. Fischer, 900 F.Supp.2d 320 (W.D.N.Y. 2012). A state prisoner who observed the Nation of Gods and Earths (NGE) faith brought an action against correctional officials, alleging that the officials violated his right to practice his religion, denied his right of access to courts, and retaliated against him. The prisoner sought declaratory and injunctive relief, as well as money damages. The officials moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the issue of whether correctional officials' restrictions on NGE activities were adequately justified by legitimate security concerns, as required under the First Amendment and RLUIPA, could not be resolved on a motion for judgment on the pleadings, since it was not possible, based solely on the pleadings, to determine whether the actions of the officials had unjustifiably burdened the prisoner's religious exercise. The court held that individual correctional officials were qualifiedly immune from the prisoner's claim for damages based on the officials' preventing the prisoner from participating in such activities, where the rights of the prisoner, who observed the NGE faith, to hold study group classes, wear certain articles of clothing or emblems, and observe NGE holy days, were not clearly established First Amendment rights, given that department of corrections protocols did not specifically protect such religious activities. The court found that the prisoner's allegations, that he was denied access to courts due to a correctional official's confiscation or destruction of documents, failed to state a claim for denial of access to courts, where the allegations were conclusory, and the prisoner failed to show what prejudice he suffered as a result of the official's alleged actions. (Attica Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED IMMUNITY

McCullum v. Tepe, 693 F.3d 696 (6th Cir. 2012). A deceased inmate's mother sued a prison psychiatrist under § 1983, claiming that he was deliberately indifferent to the serious medical need of the inmate, who hung himself from his bed. The district court denied the psychiatrist's motion for summary judgment and he appealed. The appeals court affirmed, finding that the psychiatrist could not invoke qualified immunity. According to the court, a physician employed by an independent non-profit organization, but working part-time for a county as a prison psychiatrist, could not invoke qualified immunity in a § 1983 suit arising out of his activities at the prison. The court found that there was no common-law tradition of immunity for a private doctor working for a public institution at the time that Congress enacted § 1983. (Butler County Prison, Community Behavioral Health, Ohio)

U.S. Appeals Court
QUALIFIED IMMUNITY

Miller v. Harbaugh, 698 F.3d 956 (7th Cir. 2012). The mother of a minor who hanged himself while incarcerated at a state youth detention facility, on her own behalf and as the minor's representative, brought a § 1983 action against state officials, alleging deliberate indifference to the minor's serious mental illness. The 16-year-old youth had a history of mental illness and was known to have attempted suicide at least three times. The district court granted summary judgment for the officials. The mother appealed. The appeals court affirmed. The appeals court held that, even assuming that state supervisory officials' decision to use metal bunk beds in rooms of a youth detention facility that were occupied by residents who were mentally disturbed but did not appear to be imminently suicidal, amounted to deliberate indifference to the residents' serious medical needs, the law was not then so clearly established as to defeat the officials' defense of qualified immunity to the due process claim. (Illinois Youth Center, IYC Kewanee, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Moulton v. DeSue, 966 F.Supp.2d 1298 (M.D.Fla. 2012). The personal representative of a jail inmate's estate brought a § 1983 action against correctional officers, a nurse, and a sheriff, alleging deliberate indifference to the inmate's right to adequate medical care while in pretrial confinement, which resulted in her death. The defendants filed motions for summary judgment. The district court denied the motions in part and granted the motions in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers' failure to call emergency rescue when the pregnant jail inmate complained of stomach cramps constituted more than grossly negligent disregard of a substantial risk of a serious harm, precluding summary judgment for the officers on the deliberate indifference to the inmate's serious medical need claim. According to the court, correctional officers were on notice that their alleged actions or inactions violated the jail inmate's clearly established Fourteenth Amendment right to adequate medical care, and, thus, the officers were not entitled to qualified immunity in § 1983 action. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers acted with ill will or malice toward the jail inmate, or exhibited reckless indifference. (Bradford County Jail, Florida)

U.S. Appeals Court
QUALIFIED IMMUNITY

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed

from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department)

U.S. District Court
RESPONDEAT SUPERIOR

Patel v. Moron, 897 F.Supp.2d 389 (E.D.N.C. 2012). A federal prisoner brought a *Bivens* action against prison officials, alleging, among other things, deliberate indifference to his medical needs in violation of the Eighth Amendment, violation of due process, retaliation in violation of the First Amendment, and denial of access to courts. The defendants moved to dismiss for failure to state a claim and for a protective order and stay, and the prisoner moved for a temporary restraining order, for a continuance to permit discovery, and to strike portions of the defendants' motion to dismiss. The district court held that: (1) the prisoner was not responsible for failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA); (2) the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim; (3) the prisoner's allegations were sufficient to state a due process claim that he was placed in solitary confinement in violation of the Bureau of Prison's regulations and without having a legitimate investigation or a pending disciplinary charge; and (4) the allegations were sufficient to state a claim of retaliation in violation of the First Amendment. The court dismissed claims that were based on the theory of respondeat superior. According to the court, prison officials' refusal to provide grievance forms and interference with the prisoner's efforts to exhaust administrative remedies did not violate the prisoner's First Amendment right of access to courts. (Federal Correctional Center-Butner, N.C., and Rivers Correctional Institution, operated by the GEO Group, Inc)

U.S. District Court
QUALIFIED IMMUNITY

Peoples v. Fischer, 898 F.Supp.2d 618 (S.D.N.Y. 2012). A state prisoner who was housed in segregation for over two years brought an action against prison officials, alleging the defendants violated his right to be free from cruel and unusual punishment. After the district court dismissed the prisoner's complaint in part, the defendants moved for reconsideration. The district court granted the motion in part and denied in part. The court held that the prison officials were arguably put on sufficient notice that a sentence of three years of special housing unit (SHU) confinement for a non-violent infraction of prison rules could well be found to be grossly disproportionate and, therefore, in violation of the Eighth Amendment, such that the conduct of the prison officials in sentencing the prisoner to such a sentence could be found to have violated the prisoner's clearly established right to be free from cruel and unusual punishment. The court denied qualified immunity for the prison officials, noting that numerous courts had found that long stretches of segregation could constitute cruel and unusual punishment, and courts had repeatedly determined that the conditions of segregated confinement were unconstitutional if they did not meet certain minimum standards. The court noted that the prisoner was housed in segregation for over two years even though there was never any finding that he posed a threat to the safety of others or the security of the prison. (Upstate Correctional Facility, Green Haven Correctional Facility, New York)

U.S. District Court
ELEVENTH
AMENDMENT

Roberts v. New York, 911 F.Supp.2d 149 (N.D.N.Y. 2012). Retired state employees brought an action against the state of New York, state departments, and state officials, alleging that the defendants unilaterally increased the percentage of contributions that retired employees were required to pay for health insurance benefits in retirement and violated the Contracts Clause and Due Process Clause of the United States Constitution, impaired the retired employees' contractual rights under terms of their collective bargaining agreement (CBA), and violated state law. The retirees sought injunctive relief, declaratory judgments and monetary damages. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) claims against the state of New York and state departments were barred by the Eleventh Amendment; (2) the allegations stated a claim against state officials for violation of the Contracts Clause; and (3) the allegations stated a Fourteenth Amendment due process claim against state officials. (Council 37, American Federation of State, County and Municipal Employees, New York)

U.S. District Court
QUALIFIED IMMUNITY

Ruffins v. Department of Correctional Services, 907 F.Supp.2d 290 (E.D.N.Y. 2012). A plaintiff brought a § 1983 action against a state's Department of Correctional Services (DOCS) and its commissioner and several employees, and the state's Division of Parole and its chairperson and several employees, alleging wrongful detention for violations of an allegedly illegally-imposed term of post-release supervision (PRS), false arrest and imprisonment, negligence, and a New York state claim for gross negligence. The defendants moved to dismiss. The district court granted the motion. The court held that the individual defendants, who were employees of New York's Department of Correctional Services (DOCS) or Division of Parole, were entitled to qualified immunity for their actions

during the time between the administrative imposition of a term of post-release supervision (PRS) and a court decision, which found that such imposition of PRS violated due process guarantees. (New York State Division of Parole, Department of Correctional Services for the State of New York)

U.S. District Court
ABSOLUTE IMMUNITY

Shah v. Danberg, 855 F.Supp.2d 215 (D.Del. 2012). A state inmate who pled guilty but mentally ill to a charge of first degree murder filed a § 1983 action against a state judge and prison officials alleging that his placement in a correctional center, rather than in a psychiatric center, violated his constitutional rights. The court held that the state judge was entitled to absolute judicial immunity from liability in inmate's § 1983 action despite the inmate's contention that the judge's incorrect application of a state statute resulted in violation of his constitutional rights, where there were no allegations that the judge acted outside the scope of her judicial capacity, or in the absence of jurisdiction. The court ruled that the state inmate failed to establish the likelihood of success on the merits of his claim and thus was not entitled to a preliminary injunction ordering his transfer, despite the inmate's contention that he was mentally unstable and had repeatedly caused himself physical injury during his suicide attempts, where medical records the inmate submitted were ten years old, and a state supreme court recognized that prison officials had discretion to house inmates at facilities they chose. The court ordered the appointment of counsel, noting that the inmate was unable to afford legal representation, he had a history of mental health problems, and the matter presented complex legal issues. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. Appeals Court
QUALIFIED IMMUNITY

Sharp v. Johnson, 669 F.3d 144 (3rd Cir. 2012). An inmate, who was a Sunni Muslim of the Habashi sect, brought an action against officials at two prisons, alleging violations of the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment in favor of the defendants after a bench trial. The inmate appealed. The appeals court affirmed. The appeals court held that: (1) RLUIPA did not permit the inmate's action against prison officials; (2) the error in placing the burden upon the inmate was not harmful; (3) it was not an abuse of discretion to permit prison officials to raise a qualified immunity defense at trial; and (4) the officials were entitled to qualified immunity. (Pennsylvania Department of Corrections, SCI-Pittsburgh and SCI-Greene)

U.S. District Court
ELEVENTH
AMENDMENT

Smith v. Reyes, 904 F.Supp.2d 1070 (S.D.Cal. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against prison employees, alleging excessive force, failure to protect, failure to supervise, and filing a false misbehavior report in violation of the Eighth Amendment. The district court granted the defendants motion to dismiss. The court held that the prisoner's § 1983 claims against prison employees in their official capacities, alleging violations of the Eighth Amendment, were precluded by Eleventh Amendment sovereign immunity. The court found that the prisoner's allegations that a prison employee assaulted him and that other employees failed to report the alleged misconduct implied the invalidity of an administrative report resulting in the loss of good-time credits, was precluded because the prisoner's conviction had not been reversed, expunged, declared invalid, or called into question. (Calipatria State Prison, California)

U.S. Appeals Court
ELEVENTH
AMENDMENT

Snow v. McDaniel, 681 F.3d 978 (9th Cir. 2012). A state death-row inmate brought a § 1983 action for declaratory, injunctive, and monetary relief against prison officials and medical personnel, alleging, among other things, deliberate indifference to his medical needs in violation of his rights under the Eighth Amendment. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that: (1) factual issues precluded summary judgment for the defendants on the issue of whether denial of a recommended treatment violated the inmate's Eighth Amendment rights; (2) factual issues precluded summary judgment for the defendants on the ground that the decision to treat the inmate pharmacologically, rather than surgically, was a mere difference of opinion over the course of treatment that did not establish deliberate indifference; (3) factual issues precluded summary judgment for the warden and the assistant warden on the claim for deliberate indifference to the inmate's serious medical needs; (4) factual issues precluded summary judgment for the head of the prison's utilization review panel on the claim for deliberate indifference to the inmate's serious medical needs; (5) the Eleventh Amendment applied to bar the claim against the state and the state corrections department for monetary damages based on the alleged custom or policy of refusing to provide certain types of medical care to inmates; and (6) factual issues precluded summary judgment for the defendants on the inmate's Eighth Amendment claim for injunctive relief. (Ely State Prison, Nevada Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Stanfill v. Talton, 851 F.Supp.2d 1346 (M.D.Ga. 2012). The father of a pretrial detainee who died while in custody at a county jail brought a § 1983 action individually, and as administrator of the detainee's estate, against a county sheriff and others, alleging that the defendants violated the detainee's rights under the Eighth and Fourteenth amendments. The county defendants moved for summary judgment, and the father cross-moved for partial summary judgment and for sanctions. The district court granted the defendants' motion for summary judgment. The court held that the father failed to establish that the county defendants had a duty to preserve any video of the detainee in his cells, as would support sanctions against the defendants in the father's civil rights action. The court noted that the defendants did not anticipate litigation resulting from the detainee's death, the father did not file suit until almost two years after the detainee's death, and there was no indication that the father requested that the defendants impose a litigation hold or provided the defendants any form of notice that litigation was imminent or even contemplated until the lawsuit was actually filed.

The court found that county correctional officers' use of force in placing the detainee in a restraint chair was not excessive, in violation of the Fourteenth Amendment, where less than one hour before the detainee was placed in the chair he had tied tourniquet around his arm, somehow removed metal button from his prison jumpsuit, cut his wrist or arm, and sprayed blood across his cell. The court noted that the officers were familiar with the inmate's history of self-mutilation, and the extent of injury inflicted by the officers' use of the chair was minimal, and the officers made some effort to temper the severity of their use of force. After the detainee was placed back in the restraint chair, he was given water, and a jail nurse, at one officer's request, took the inmate's blood pres-

sure, pulse, and breathing rate, and determined that the detainee appeared in normal health and needed no further medical care. The court also held that the officers' continued restraint of the detainee in the restraint chair was not excessive, as would violate the Fourteenth Amendment where the officers were aware of detainee's history of self-mutilation, the detainee posed a serious risk of harm to himself, and the particular circumstances confronting the officers justified the continued use of restraints until the officers were reasonably assured that the situation had abated. According to the court, even if the history of the detainee as a "cutter" constituted a serious medical need, there was no evidence that the county correctional officers were deliberately indifferent to that need, in violation of the Fourteenth Amendment, where the only risk of harm the officers were subjectively aware of was the detainee's potential to injure himself. Despite the detainee's refusal to speak with medical staff upon arrival at jail, he was immediately classified as a suicide risk due to his self-destructive history and was placed on a suicide watch, and for two days, the detainee remained on suicide watch in jail custody, whereby he was observed at least every 15 minutes, without incident.

The court concluded that there was no causal connection between the county correctional officers' alleged indifference to the detainee's medical needs and detainee's death while in custody at the county jail, as would support a Fourteenth Amendment deliberate indifference claim brought by the detainee's father. The court noted that the father's medical expert opined that the detainee's death was not causally related to his restraint in the chair, and although the expert listed dehydration as a contributing cause of the detainee's sudden cardiac dysrhythmia that led to the detainee's death, the expert did not testify that the detainee would have survived had he not been dehydrated.

The court held that the father failed to show, by way of medical evidence, that an alleged six-minute delay of a correctional officer in performing resuscitation efforts once the detainee was found unresponsive, was the cause of the detainee's death, as would support the father's Fourteenth Amendment deliberate indifference claim against the county defendants. The court ruled that "All parties can agree that Stanfill's death was unfortunate, and that in hindsight, perhaps more could have been done. Hindsight, however, is not an appropriate lens through which to view the Defendants' actions. The Plaintiff has failed to meet his burden of proving that the Defendants violated Stanfill's constitutional rights. The Defendants are therefore entitled to qualified immunity." (Houston County Detention Center, Georgia)

U.S. District Court
QUALIFIED IMMUNITY

Wells v. City of Chicago, 896 F.Supp.2d 725 (N.D.Ill. 2012). The representative of the estate of a detainee who died on the night he was to be released from custody brought an action against a city and city police officers, alleging under § 1983 that the defendants unlawfully detained the detainee and denied him medical care. Following a trial, the jury returned a verdict for the representative and against four defendants on the unlawful detention claim, and for the defendants on claims relating to denial of medical care. The defendants moved for judgment as a matter of law or, in the alternative, a new trial or remittitur on the issue of damages. The district court granted the motions in part and denied in part. The district court held that: (1) the issue of whether the defendants held the detainee for more than 48 hours before being taken before a judge or being released, or for less than 48 hours for an improper purpose, was for the jury; (2) the officers had probable cause to arrest the detainee for a crime with an intent element; (3) the issue of whether individual officers participated in the unlawful detention was for the jury; (4) the officers were not entitled to qualified immunity from the unlawful detention claim; (5) the award of \$1 million in compensatory damages was excessive; and (6) the award of \$150,500 in punitive damages was not warranted where there was little to indicate that the defendants acted with evil intent or callous indifference. (Chicago Police Dept., Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Woods v. City of Utica, 902 F.Supp.2d 273 (N.D.N.Y. 2012). A wheelchair-using, paraplegic arrestee sued a city, police officer, a county, a former sheriff, and county corrections officers, bringing federal causes of action for violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Fourteenth Amendment equal protection and due process. The arrestee alleged that he was lifted out of his wheelchair and placed on the floor of a sheriff's van, forcing him to maneuver himself onto a bench seat which caused his pants and underwear to fall, exposing his genitals, that he was not secured to the bench with a seatbelt, causing him to be thrown about the passenger compartment and suffer leg spasms during his ride to the jail, that he was forced to urinate into an empty soda bottle and handle his sterile catheter with his hands that were dirty from moving himself around the floor of the van, and that the county corrections officers stood by as he struggled to maneuver himself out of the van and into his wheelchair while other inmates watched. The city and county defendants moved for summary judgment. The district court held that: (1) the city did not fail to accommodate the arrestee's disability, for purposes of the ADA and Rehabilitation Act claims; (2) summary judgment was precluded by fact issues as to whether the arrestee was denied the benefit of safe and appropriate transportation by the county on the day of his arrest when he was moved from a police station to a county jail; (3) the county was entitled to summary judgment to the extent the arrestee's claims involved his transportation from the jail to court proceedings on two other dates; (4) fact issues existed as to whether the county defendants were deliberately indifferent to the paraplegic inmate's known medical need for suppositories every other day, in violation of due process, but they were not deliberately indifferent to his need for catheters and prescription pain medication; and (5) the county defendants were not entitled to qualified immunity. The court noted that while the county defendants disputed the arrestee's version of the facts, corrections officers all denied receiving any training regarding how to transport disabled inmates. (Utica Police Department, Oneida County Correctional Facility, New York)

2013

U.S. District Court
ELEVENTH
AMENDMENT

Ames v. Randle, 933 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought § 1983 Eighth Amendment claims against various employees of the Illinois Department of Corrections (IDOC) who allegedly were responsible for the conditions of the inmate's confinement. The defendants filed a motion to dismiss. The court denied the motion, finding that the inmate adequately pled that Illinois prison officials were deliberately indifferent, as required to state a § 1983 Eighth Amendment claim. According to the court, the inmate alleged that he repeatedly advised the

official about the prison's detrimental living conditions and that the official did not make an effort to remedy the conditions, that he informed another official about the intolerable living conditions and that this official did not make an effort to remedy the conditions, and that he discussed the intolerable living conditions with other officials, each of whom also failed to make any efforts to remedy the living conditions. The inmate claimed that he was subjected to unsanitary conditions, a lack of ventilation, and continuous lighting that interfered with his sleep. He also alleged that his housing area had dried bodily fluids on the wall of his cell and a strong odor of ammonia from his uncleaned toilet, that there was pest infestation accompanied by filth and feces, and that there was a complete lack of basic cleaning supplies or even garbage bags. He also cited filthy soiled bedding, missing or dilapidated, and sometimes dangerously damaged cell furniture and fixtures, and badly peeling toxic paint. The inmate suffered from endocarditis, an infection of the lining of the heart, which he claimed was due to the conditions of his confinement, and from which his "numerous, almost constant, fungal infections" stemmed. The court held that the inmate's official-capacity suit against Illinois prison officials seeking prospective relief was not barred by the Eleventh Amendment, as it fell within the *Ex parte Young* exception to Eleventh Amendment immunity. The court noted that the inmate named individual state officials as defendants in this action, and he alleged that those state officials failed to provide him with the minimal civilized measures of life's necessities, in violation of the Eighth Amendment, and the inmate sought a permanent injunction enjoining the officials from continuing to engage in the allegedly unlawful conduct. (Stateville Correctional Center, Illinois Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Ayotte v. Barnhart, 973 F.Supp.2d 70 (D.Me. 2013). A state inmate filed a § 1983 action alleging that prison officials failed to protect him from a padlock assault by a fellow prisoner, and retaliated against him for filing complaints about prison conditions. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the decision by state prison officials to provide inmates with padlocks to secure their personal belongings did not demonstrate deliberate indifference to a substantial risk of serious harm, as required to establish an Eighth Amendment violation, despite the history of padlocks being used as weapons by some prisoners. The court noted that a state statute required officials to provide inmates with a reasonably secure area for their personal belongings, and there were generally only one or two padlock assaults per year. The court found that verbal abuse, threats, and two strip-searches of the inmate by a prison guard were not de minimis, and thus were sufficiently adverse to support the inmate's First Amendment retaliation claim against the guard. Because inmates' rights against retaliatory action by prison officials for filing complaints about their treatment were clearly established, the court ruled that the prison guards were not entitled to qualified immunity from liability in the inmate's § 1983 First Amendment retaliation action. (Maine State Prison)

U.S. District Court
ELEVENTH
AMENDMENT

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff's department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff's department and other county defendants voluntarily removed to inmate's action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTCOA) claims they would be subject to in state court as a result of waiver. The court held that the former jail inmate's allegations that the county defendants had a "disorganized medical program" at the jail and failed to maintain a "quality assurance program," and that the jail failed "to maintain adequate and accurate medical records," insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner's HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates' alleged Eighth Amendment violations under § 1983. According to the court, the inmate's allegations that the "defendants" told the inmate that he had HIV and administered HIV medication to him, even though he did not have HIV, did not sufficiently state that the county jail superintendent was personally involved with the inmate's medical treatment or otherwise took any action with respect to the inmate, as would support the inmate's intentional infliction of emotional distress claim against the superintendent, in his individual capacity, under Massachusetts law. (Suffolk County House of Correction, Mass.)

U.S. Appeals Court
ABSOLUTE IMMUNITY

Engebretson v. Mahoney, 724 F.3d 1034 (9th Cir. 2013). A former state inmate brought a pro se § 1983 action against a state and prison officials, alleging, among other things, that the defendants unconstitutionally restrained his liberty during an illegal term of probation. The district court granted the defendants' motions to dismiss, and the former inmate appealed. The appeals court affirmed. The court held that the former inmate's allegations were sufficient to establish standing to assert a § 1983 claim, but as a matter of apparent first impression, the prison officials charged with executing a facially valid court order, enjoy absolute immunity from § 1983 liability for the conduct prescribed by those orders. (Montana Department of Corrections)

U.S. Appeals Court
QUALIFIED IMMUNITY

Ford v. City of Yakima, 706 F.3d 1188 (9th Cir. 2013). A motorist brought a § 1983 action alleging First Amendment retaliation against a city and police officers who booked and jailed the motorist following a traffic stop. The district court granted summary judgment to the defendants, and the motorist appealed. The appeals court reversed and remanded. The court held that the motorist's criticism of the police for what the motorist perceived to be an unlawful and racially motivated traffic stop was squarely within the protective umbrella of the First Amendment, and any action to punish or deter such speech was categorically prohibited by the federal constitution. The court found that the motorist's booking and jailing by the police officers, allegedly in retaliation for the motorist's criticism of what he perceived to be an unlawful and racially motivated traffic stop, would chill a person of ordinary firmness from future First Amendment activity, as required to support a § 1983 First Amendment retaliation claim against the city and the police officers. The court held that the police officers were not entitled to qualified immunity from the motorist's § 1983 claim that they booked and arrested him in violation of the First Amendment, where it was clearly established that it was unlawful to book and jail motorist in retaliation for First Amendment

activity, even if probable cause existed, and a reasonable police officer would have known that it was unlawful to use his authority to retaliate against an individual because of his speech. (City of Yakima Police Department, Washington)

U.S. Appeals Court
QUALIFIED IMMUNITY

Glaze v. Byrd, 721 F.3d 528 (8th Cir. 2013). A pretrial detainee who had been beaten by three fellow inmates brought an action against a correctional officer, a lieutenant, and jail officials, alleging deliberate indifference to a substantial risk of serious harm, in violation of the Fourteenth Amendment. The district court denied the defendants' motion for summary judgment based on qualified immunity. The officer and the lieutenant appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment for the correctional officer was precluded by a fact question as to whether the correctional officer was aware of a substantial risk of harm to the detainee and was deliberately indifferent to his safety. (Faulkner County Detention Center, Arkansas)

U.S. District Court
SOVEREIGN IMMUNITY

Grohs v. Yatauro, 984 F.Supp.2d 273 (D.N.J. 2013). A civilly-committed resident at a special treatment unit (STU) operated by the New Jersey Department of Corrections (NJDOC) brought action against NJDOC officials, alleging violations of his substantive due process rights under § 1983. The district court held that the resident's claims against the officials in their official capacities were barred by sovereign immunity. The court held that the resident's allegations adequately pled the officials' personal involvement in his complaint that: (1) there were visibly leaking steam pipes in a special treatment unit (STU) for which trash cans were used to collect water; (2) NJDOC officials personally toured STU; (3) STU received numerous written complaints from residents about inadequate hot water; and (4) an STU assistant administrator told the resident that defective piping valves were too expensive to repair. The court found that the officials were subject to liability under § 1983 in their individual capacities. The court held that NJDOC officials were not entitled to qualified immunity from the civilly committed resident's § 1983 conditions of civil commitment claim under the Due Process Clause, arising from inadequate hot water at a special treatment unit (STU) in which he was housed. (Special Treatment Unit, Avenel, Middlesex County, New Jersey)

U.S. District Court
BIVENS CLAIM
QUALIFIED IMMUNITY

Gwathney v. Warren, 930 F.Supp.2d 1313 (M.D.Ala. 2013). An inmate filed a *Bivens* suit against a prison officer and others for use of excessive force during a pat-down search, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment, and other claims. All claims except the excessive use of force claim were dismissed. The officer filed a renewed motion to dismiss on the grounds of qualified immunity, or in the alternative for summary judgment. The district court granted summary judgment in favor of the officer. The court held that evidence did not create a fact issue as to whether the prison official maliciously or sadistically inflicted pain on the inmate while conducting a pat-down search, as required for the inmate to survive summary judgment on the defense of qualified immunity. According to the court, when the officer entered the inmate's cubicle, he observed the inmate rise from his bunk, turn, and place his hand down front of his pants, which typically signaled that an inmate was trying to conceal an object. The inmate was facing away from the officer when the officer began the pat-down and thus, the inmate could not observe any expression or movement suggesting that the officer had any malicious motive in touching the inmate's shoulders. Even after the inmate fell to his knees from post-surgery shoulder pain, the officer's statement "[o]h, you still can't raise your arm" did not indicate malice for the sole purpose of inflicting pain, but rather supported an inference that the officer still did not believe the inmate's assertion about shoulder surgery and that he could not raise his arm. (Federal Prison Camp, Montgomery, Alabama)

U.S. District Court
ELEVENTH
AMENDMENT

Hannon v. Beard, 979 F.Supp.2d 136 (D.Mass. 2013). Twenty-seven state inmates filed a § 1983 action against the Massachusetts Department Of Correction (MDOC), UMass Correctional Health (UMCH), the governor, and prison officials, alleging violations of their right to be free of cruel and unusual punishment by exposing them to harmful environmental conditions, First Amendment rights by retaliating against them for filing grievances and law suits, fundamental right of access to courts, and due process and equal protection rights. The officials moved to dismiss. The district court granted the motion, finding that the Eleventh Amendment barred claims against MDOC and UMCH, and that the inmates failed to state plausible Eighth Amendment claims and First Amendment retaliation claims. According to the court, the inmates' allegations that they were exposed to unsafe levels of toxins at a facility were not enough to show that the alleged deprivation was objectively serious, and thus were insufficient to state a plausible Eighth Amendment claim. The court noted that the inmates did not allege specific facts that would support a finding that environmental toxins were actually present, that the inmates were actually exposed to those substances, and that exposure caused injury. (UMass Correctional Health, and Massachusetts Department of Correction, Souza Baranowski Correctional Center)

U.S. District Court
ELEVENTH
AMENDMENT
OFFICIAL CAPACITY

Hilton v. Wright, 928 F.Supp.2d 530 (N.D.N.Y. 2013). A state prison inmate infected with the Hepatitis C virus (HCV) brought a class action against the New York State Department of Correctional Services and Community Supervision (DOCCS) and its chief medical officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving injunctive and equitable claims. The defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. On remand, the district court held that: (1) the Eleventh Amendment barred an Eighth Amendment claim against an officer in his official capacity; (2) the inmate waived the Eighth Amendment claim based on initial denial of treatment due to his short prison term; (3) a fact issue precluded summary judgment on the Eighth Amendment claim based on denial of treatment due to the inmate's failure to complete a substance abuse program; (4) a fact issue precluded summary judgment on the ADA and Rehabilitation Act claims; and (5) enlargement of the cap set forth in the agreement was appropriate. (New York State Department of Correctional Services and Community Supervision)

U.S. Appeals Court
QUALIFIED IMMUNITY

Johnson v. Government of Dist. of Columbia, 734 F.3d 1194 (D.C. Cir. 2013). Female arrestees who were forced to endure strip searches while awaiting presentment at hearings at the District of Columbia Superior Court filed a class action against the District of Columbia and a former United States Marshal for the Superior Court, alleging that such searches violated the Fourth Amendment. They also alleged a violation of the Fifth Amendment's equal protection guarantee, where men were not similarly strip searched. The district court granted summary judgment to the District and the Marshal. The arrestees appealed. The appeals court affirmed. The appeals court found that the former marshal who administered the Superior Court cellblock was at all times a federal official acting under the color of federal law, and, thus, the District of Columbia could not be held liable under § 1983 for the marshal's conduct. The court noted that the statutory scheme gave the District of Columbia no power to exercise authority over, or to delegate authority to, the marshal, and lacked the discretion to stop sending pre-presentment arrestees to the marshal. According to the court, any Fourth Amendment right that the former United States Marshal may have violated by subjecting detainees arrested on minor charges to blanket strip searches was not clearly established at the time of any violation, and therefore the marshal was entitled to qualified immunity on the detainees' claims alleging violations of their Fourth Amendment rights. The court also found no evidence that the marshal purposefully directed that women should be treated differently than men with respect to the strip-search policy at the Superior Court cellblock, in violation of the Fifth Amendment's equal protection guarantee. (District of Columbia, United States Marshal for the Superior Court)

U.S. District Court
QUALIFIED IMMUNITY

Keele v. Glynn County, Ga. 938 F.Supp.2d 1270 (S.D.Ga. 2013). A pretrial detainee's estate brought an action against a county, county sheriff, and officials at the county detention facility in their official and individual capacities, alleging that, while detained, the detainee's access to necessary medical care was delayed or deficient and that the delay or deficiency led to the detainee's death. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the detainee's bruised or fractured ribs and rash were objectively serious medical needs, as required for the estate's deliberate indifference claim against officials at the county detention facility under Fourteenth Amendment. According to the court, a lay person would be alerted to the necessity of medical attention after the detainee lost control of her bowels, began to hallucinate, vomited repeatedly, became pale and developed blisters inside her mouth, and thus the detainee had an objectively serious medical need when the symptoms manifested, as required for the estate's deliberate indifference claim against the officials.

The court found that summary judgment was precluded by genuine issues of material fact regarding whether the nurse at the county detention facility was subjectively aware that the pretrial detainee faced a substantial risk of serious harm, whether the nurse was more than grossly negligent in disregarding that risk of harm, and whether the nurse's actions caused the detainee's injuries, including death. The court noted that a reasonable nurse in the county detention facility nurse's position would have known that delaying provision of medical care to a pretrial detainee with the detainee's symptoms, which included hallucinating, withdrawing from pain medication, pale, vomiting, hives, complaining of feeling bad, and not eating, drinking, or getting up to do any activity, violated her constitutional rights, and thus the nurse failed to establish an entitlement to qualified immunity from deliberate indifference claims under the Fourteenth Amendment. According to the court, it was clearly established that knowledge of the need for medical care and intentional refusal to provide that care constituted deliberate indifference, and the law was clearly established that nearly half a day was too long to fail to properly respond to a medical need. (Glynn County Detention Center, Georgia)

U.S. Appeals Court
QUALIFIED IMMUNITY

Keith v. Koerner, 707 F.3d 1185 (10th Cir. 2013). A female former prison inmate who was impregnated as a result of her vocational-training instructor's unlawful sexual acts brought a § 1983 action against a former warden and other Kansas Department of Corrections employees. The defendants moved to dismiss. The district court granted the motion in part, but denied qualified immunity for the former warden, who appealed. The appeals court affirmed. The court held that the former prison inmate adequately alleged that the former warden violated a clearly established constitutional right, precluding qualified immunity for the warden in the § 1983 action alleging that the warden was deliberately indifferent to sexual abuse by the vocational-training instructor. According to the court, the inmate alleged that the warden had knowledge of the abuse but failed to properly investigate or terminate staff when abuse allegations were substantiated, and that the prison's structural policy problems contributed to abuse by failing to address known problems with the vocational program or to use cameras to monitor inmates and staff. (Topeka Correctional Facility, Kansas)

U.S. District Court
QUALIFIED IMMUNITY

Lucia v. City of Peabody, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. Appeals Court
QUALIFIED IMMUNITY

McCreary v. Richardson, 738 F.3d 651 (5th Cir. 2013). A Muslim state inmate brought an action against a prison captain in his individual capacity, alleging that the captain ordered an unconstitutional strip search and prevented him from attending religious services in violation of the Religious Land Use and Institutionalized Person's Act (RLUIPA), and the First, Fourth, and Fourteenth Amendments. The district court denied the inmate's motion for default judgment and granted the captain's motion for summary judgment. The inmate appealed. The appeals court affirmed. The appeals court held that: (1) the inmate was not entitled to monetary damages against a correctional officer under the provisions of RLUIPA; (2) the strip search did not violate the inmate's Fourth Amendment rights; (3) a reasonable officer would not know that a lengthy strip search in the presence of female officers violated clearly established law, and thus the captain was entitled to qualified immunity; and (4) the captain did not act in an objectively unreasonable manner by refusing to permit the inmate to attend a religious service after the search, where the inmate had created a disturbance during the search. According to the court, the inmate's potentially provocative questions in a public hallway constituted a disturbance, where during the strip search, the inmate asked the captain why he was singling out Muslims and subjecting them to harassment in a hallway with several other Muslim inmates who were waiting to attend a religious service. (H.H. Coffield Unit, Texas Department of Criminal Justice)

U.S. District Court
FTCA- Federal Tort Claims
Act
SOVEREIGN IMMUNITY

McKinney v. U.S., 950 F.Supp.2d 923 (N.D.Tex. 2013). A 79-year-old federal prisoner, who allegedly had been injured while being transported to a medical center, filed suit against the United States pursuant to the Federal Torts Claim Act (FTCA). The district court denied the defendants' motion to dismiss, holding that the prisoner's tort claim was not barred under the discretionary function exception to FTCA's waiver of sovereign immunity. The court noted that a prisoner has the right to bring a cause of action under FTCA for a breach of the duty prescribed by federal statute requiring the Bureau of Prisons to provide for the safekeeping, care, and subsistence of all federal prisoners. The prisoner alleged that he was injured when officials failed to assist him on stairs when he was exiting an airplane, while he was fully restrained in handcuffs, shackles, and a belly chain. According to the court, there were no legitimate policy considerations at play in the officials' choice not to assist a fully restrained, elderly, ill, and outnumbered prisoner on the stairs of an airplane. The prisoner alleged that, due to his fall, he suffered intense pain, has reoccurring medical issues, must now use a walker to get around, continues to need medication for pain, and requires counseling to address the mental and emotional stress he has suffered. (FCI-Fort Worth, Texas, and Federal Medical Center, Butler, North Carolina)

U.S. District Court
QUALIFIED IMMUNITY

Munson v. Gaetz, 957 F.Supp.2d 951 (S.D.Ill. 2013). A Buddhist inmate brought a § 1983 action against prison officials, alleging failure to provide him with an adequate diet, deliberate indifference to his serious medical needs, and violations of his right to free exercise of religion. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the officials were not aware that feeding the inmate a soy-rich diet posed a substantial risk of serious harm to the inmate, and therefore, the officials were entitled to qualified immunity from the inmate's § 1983 claim alleging violations of the Eighth Amendment. The court found that there was no evidence that a vegetarian diet containing soy was nutritionally inadequate, as required for the Buddhist inmate's § 1983 claim alleging violations of his First Amendment free exercise rights. The court held that the Buddhist inmate had administratively exhausted his claims that a high-soy diet fed to him violated the Eighth Amendment and his First Amendment free exercise rights, where he had submitted grievances about the diet to the grievance office, he wrote to a warden and an assistant warden regarding his grievances, and the prison officials did not respond to the grievances. (Menard Correctional Center, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Randle v. Alexander, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported the inmate's § 1983 Eighth Amendment failure to protect claim. The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)

U.S. Appeals Court
QUALIFIED IMMUNITY

Scott v. Baldwin, 720 F.3d 1034 (8th Cir. 2013). Former state inmates brought an action against a director of a Department of Corrections (DOC), alleging that their detention beyond their release dates violated their rights. The district court granted qualified immunity to the director. The inmates appealed. The appeals court affirmed. The appeals court held that the director's taking of 43 to 60 days beyond the state inmates' release dates to recalculate the inmates' release dates after a judicial decision required credit for time served for supervision or services, was not clearly unlawful, as would be deliberate indifference, and therefore, the director was entitled to qualified immunity in the inmates' § 1983 action alleging that over-detention violated Fourteenth Amendment substantive due process. The court noted that the judicial decision did not order the immediate release of the inmates, the director was not notified of the over-detentions, the inmates did not request recalculation of their release dates, and the director had to recalculate thousands of release dates. (Iowa Department of Corrections)

U.S. District Court
QUALIFIED IMMUNITY

Shaw v. District of Columbia, 944 F.Supp.2d 43 (D.D.C. 2013). A former pretrial detainee, a transgender woman, who underwent sex reassignment surgery and had her sex legally changed to female, brought an action against the United States Marshals Service (USMS), USMS marshals, District of Columbia, a police chief, and police officers, alleging under § 1983 that the defendants violated her Fourth Amendment rights in connection with her arrests, and asserting claims under the District of Columbia Human Rights Act and tort law. The police chief, officer, and USMS defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the USMS marshals were not entitled to qualified immunity from the unlawful search claim, where a reasonable officer would have known that a cross-gender search of a female detainee by male USMS employees that included intimate physical contact, exposure of private body parts, and verbal harassment, all in front of male detainees and male USMS employees, in the absence of an emergency, was unreasonable. The court also found that the USMS marshals and the police officer were not entitled to qualified immunity from a § 1983 Fifth Amendment conditions of confinement claim brought by the pretrial detainee, arising from the defendants' actions in holding the detainee with male detainees and otherwise treating her as if she were male. According to the court, a reasonable officer would know that treating the female detainee as the detainee was treated exposed her to a substantial risk of serious harm, and, therefore, would know that those actions violated the detainee's due process rights. (District of Columbia Metropolitan Police Department, Sixth District Police Station and MPD's Central Cellblock, and United States Marshals Service)

U.S. District Court
QUALIFIED IMMUNITY

Sours v. Big Sandy Regional Jail Authority, 946 F.Supp.2d 678 (E.D.Ky. 2013). The administrator of a detainee's estate filed a § 1983 action against jail officials alleging deliberate indifference to the detainee's serious medical needs, negligence, and violation of state regulations. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the nurse, a deputy jailer, and the center's administrator were not deliberately indifferent to the detainee's serious medical needs; (2) the nurse's determination that the detainee did not need insulin "right away" was a discretionary decision for which she was entitled to qualified official immunity; (3) the nurse was not entitled to qualified official immunity for her alleged failure to leave adequate instructions to deputy jailers for the care of the detainee; and (4) the jailers were entitled to qualified official immunity. The court noted that, under Kentucky law, the detention center nurse's duty to ensure that the diabetic pretrial detainee could be cared for in her absence was mandatory and ministerial, and thus the nurse was not entitled to qualified official immunity in the wrongful death action brought by the administrator, for her alleged failure to leave adequate instructions for deputy jailers for the care of the detainee. According to the court, the nurse was aware that the jailers were unlikely to be able to identify the symptoms of diabetic ketoacidosis and that there was no information in the detention center about diabetes. *On appeal*, the court affirmed in part and reversed in part. The appeals court held that the nurse was not entitled to qualified immunity. (Big Sandy Regional Detention Center, Kentucky)

U.S. Appeals Court
QUALIFIED IMMUNITY

Spavone v. New York State Dept. of Correctional Services, 719 F.3d 127 (2nd Cir. 2013). A state prisoner brought a suit against corrections officials under § 1983 and the Americans with Disabilities Act (ADA), alleging, among other things, that the defendants' denial of his request for a medical leave to obtain additional treatment for his post-traumatic stress disorder (PTSD) violated his Fourteenth Amendment right to equal protection of the law and his Eighth and Fourteenth Amendment right to be free of cruel and unusual punishment. The prisoner had traveled to Nicaragua in the 1980s to join the Contra rebel forces and saw combat while fighting with them in that country's civil war. He also was working on the scaffolding of a building across the street from the World Trade Center on September 11, 2001, and was credited with risking his life to rescue several of his coworkers. He witnessed victims of the attack jump from the towers. The district court denied the defendants' motion for summary judgment based on qualified immunity, and the defendants appealed. The appeals court reversed and remanded. The appeals court held that the corrections officials were entitled to qualified immunity on prisoner's equal protection claim, and on the prisoner's Eighth Amendment claim. According to the court, even if the prisoner was in need of absolutely necessary medical care, neither official had reason to conclude that such care was not available to him in the prison, and thus there was a rational basis for distinguishing between leaves of absence for the treatment of mental illness as opposed to other sorts of illness for which leave was available. The court noted that there no evidence that either official thought that denying the prisoner's request for a leave of absence would cause him harm, much less harm so serious that it would be objectively unreasonable for them to believe that the policy of restricting leaves of absence for mental health treatment was consistent with prisoner's right to be free of cruel and unusual punishment. (New York State Department of Correctional Services)

U.S. Appeals Court
QUALIFIED IMMUNITY

Stickley v. Byrd, 703 F.3d 421 (8th Cir. 2013). A pretrial detainee brought a § 1983 action against a county sheriff and county detention center personnel. The district court granted the defendants qualified immunity in part, but denied it as to the detainee's claim that the defendants' refusal to give him adequate toilet paper violated the Fourteenth Amendment. The defendants appealed. The appeals court reversed and remanded. The appeals court held that detention center personnel did not violate the detainee's Fourteenth Amendment rights by providing him with only one roll of toilet paper per week, even the detainee used his weekly allotment before the week's end each week. When this happened, the detainee had to shower to clean himself following a bowel movement. The court noted that although the detainee exhausted his toilet paper supply each week before receiving an additional roll the following week, he was not always without toilet paper, and when he did run out of toilet paper, he was able to clean himself by taking a shower. (Faulkner County Detention Center, Arkansas)

U.S. Appeals Court
QUALIFIED IMMUNITY

Stoudemire v. Michigan Dept. of Corrections, 705 F.3d 560 (6th Cir. 2013). A female former prisoner brought an action against the Michigan Department of Corrections (DOC), a warden, and other DOC-associated officers, doctors, and nurses, asserting violations of § 1983, the Age Discrimination in Employment Act (ADEA), and state law. The prisoner alleged that she underwent three separate amputations as a result of inadequate health care by the defendants and was subjected to a strip search that served no legitimate penological purpose. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the §

1983 claims against them, and they appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the district court did not properly evaluate the warden's qualified immunity defense to the prisoner's Eighth Amendment claim of deliberate indifference to her serious medical needs, when it denied summary judgment on qualified immunity grounds to "defendants.," The court held that remand was warranted for the court to conduct a particularized analysis of whether the warden was deliberately indifferent to the conditions of the prisoner's confinement while in quarantine. The court noted that the district court did not mention any facts in the record that specifically pertained to the warden, nor did the court make any findings regarding the warden's knowledge or mental state. According to the court, the prisoner established, for qualified immunity purposes, that the corrections officer violated her Fourth Amendment rights by conducting a strip search of her in her cell in view of other inmates and prison personnel. The court noted that the officer received a reprimand for violating Department of Corrections (DOC) rules by conducting the strip search in view of those not assisting in the search, the officer allegedly refused to tell the prisoner her reasons for initiating the search, and smirked during the search, which suggested personal animus and implicated the prisoner's dignitary interest. The court found that the female prisoner's right not to be subjected to a suspicionless strip search in full view of others absent a legitimate penological justification was clearly established, for purposes of the female corrections officer's qualified immunity defense. (Huron Valley Women's Correctional Facility, Michigan)

U.S. District Court
QUALIFIED IMMUNITY

Tavares v. Amato, 954 F.Supp.2d 79 (N.D.N.Y. 2013). An inmate who had recently been released from the custody of a county jail filed a pro se suit against a sheriff and jail administrator, claiming his First Amendment rights were violated by his inability to access a law library and to engage in religious worship while confined in involuntary protective custody (IPC). The inmate also alleged that he was discriminated against and placed in IPC because he was a sex offender, in contravention of the Equal Protection Clause, and that his conditions of confinement violated the Eighth Amendment. Both sides moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that: (1) there was no evidence of injury, as required to support a claim for violation of the First Amendment's right of access to the courts; (2) there was no evidence that the inmate had firmly held religious beliefs, as required to support a claim for violation of his First Amendment's right to free exercise of religion; (3) confinement of the inmate in administrative segregation for 132 days was not cruel or unusual punishment, in violation of the Eighth Amendment; and (4) the inmate's initial five-day segregation, for purposes of a determining a housing classification, was insufficient to establish a liberty interest. But the court held that summary judgment was precluded by genuine issues of material fact: (1) as to whether the county jail had a rational basis for housing inmates with sex offender criminal histories in administrative segregation, rather than with the general prison population; (2) whether there was a violation of the Equal Protection Clause; and (3) on the officials' claim for qualified immunity. (Montgomery County Jail, New York)

U.S. Appeals Court
QUALIFIED IMMUNITY

Thompson v. King, 730 F.3d 742 (8th Cir. 2013). The estate of a detainee, who died in police custody from multiple drug intoxication, brought a § 1983 action against the arresting and detaining officers, alleging that the officers had shown deliberate indifference to the detainee's serious medical needs. The district court denied the officers' motion for summary judgment on the basis of qualified immunity. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the arresting officer's discovery of an empty bottle of a recently refilled anti-anxiety medication, and the detainee's statement that he had taken "a little" of the medication, did not amount to subjective knowledge that the detainee required medical attention, and thus the officer was entitled to qualified immunity in the § 1983 action arising from the subsequent death of the detainee in police custody. The court noted that the detainee presented no external injuries, and the detainee was conscious during the initial encounter, answering officers' questions and following instructions. The court found that summary judgment for the police officer in charge of the jail was precluded by a genuine issue of material fact as to whether the police officer had subjective knowledge of the serious medical need of the detainee and whether the officer deliberately disregarded that need. According to the court, a reasonable officer in charge of a jail would have known that a constitutional violation occurs by deliberately disregarding a detainee's serious medical needs, and thus the right was clearly established, and in turn the officer was not entitled to qualified immunity from the § 1983 claim arising from detainee's death while in police custody. (Saline County Detention Center, Arkansas)

U.S. Appeals Court
QUALIFIED IMMUNITY

Volkman v. Ryker, 736 F.3d 1084 (7th Cir. 2013). An employee at a correctional center brought a § 1983 action against various officials alleging retaliation in violation of the First Amendment arising from the issuance of a written reprimand and suspension following his comments to a state attorney regarding the criminal prosecution of a co-worker. The district court entered summary judgment in favor of the defendants. The employee appealed. The appeals court affirmed. The appeals court held that the employee failed to show that a reasonable official would have known that to restrict or punish his speech regarding a co-worker's punishment was unconstitutional at the time of his discipline, as required for the employee to defeat a supervisors' claims of qualified immunity from the employee's § 1983 claim of retaliation in violation of his First Amendment speech rights. According to the court, the Illinois Department of Corrections' interests in suppressing the speech of a supervisor at a correctional facility regarding a co-worker's discipline outweighed the supervisor's interests in making the speech, and, thus, the supervisor's First Amendment speech rights were not violated when he was disciplined for such speech. The court noted that supervisors were tasked with enforcing rules and regulations, and when the supervisor criticized a disciplinary decision it undermined respect for the chain-of-command, and there was value in maintaining order and respect in the paramilitary context of a correctional center. (Lawrence Correctional Center, Illinois)

U.S. District Court
QUALIFIED IMMUNITY

Vollette v. Watson, 937 F.Supp.2d 706 (E.D.Va. 2013). Former food service and medical care contractors who worked at a city jail brought an action against a sheriff, who oversaw the jail, and sheriff's deputies, alleging under § 1983 that their being required to undergo strip searches at the jail violated their Fourth Amendment rights, and that they were retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was

precluded by genuine issues of material fact as to what triggered the strip searches of contractors who worked at city jail, the nature of such searches, and the factual predicate for revocation of the contractors' security clearances. According to the court, at the time the contractors were strip searched, it was clearly established, for qualified immunity purposes in the contractors' § 1983 Fourth Amendment unlawful search action against the sheriff and sheriff's deputies, that prison employees did not forfeit all privacy rights when they accepted employment, and thus, that prison authorities were required to have reasonable and individualized suspicion that employees were hiding contraband on their person before performing a "visual body cavity search." The court also found that summary judgment as to the contractors' claims for false imprisonment and battery was precluded by genuine issues of material fact as to what triggered the strip searches. (Aramark and Correct Care Solutions, Contractors, Portsmouth City Jail, Virginia)

U.S. Appeals Court
QUALIFIED IMMUNITY

Wilson v. Montano, 715 F.3d 847 (10th Cir. 2013). An arrestee brought a § 1983 action against a county sheriff, several deputies, and the warden of the county's detention center, alleging that he was unlawfully detained, and that his right to a prompt probable cause determination was violated. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The detainee had been held for 11 days without a hearing and without charges being filed. The appeals court held that the defendants were not entitled to qualified immunity from the claim that they violated the arrestee's right to a prompt post-arrest probable cause determination, where the Fourth Amendment right to a prompt probable cause determination was clearly established at the time. The court held that the arrestee sufficiently alleged that the arresting sheriff's deputy was personally involved in the deprivation of his Fourth Amendment right to a prompt probable cause hearing, as required to support his § 1983 claim against the deputy. The arrestee alleged that he was arrested without a warrant, and that the deputy wrote out a criminal complaint but failed to file it in any court with jurisdiction to hear a misdemeanor charge until after he was released from the county's detention facility, despite having a clear duty under New Mexico law to ensure that the arrestee received a prompt probable cause determination. The court held that the arrestee sufficiently alleged that the county sheriff established a policy or custom that led to the arrestee's prolonged detention without a probable cause hearing, and that the sheriff acted with the requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the sheriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and detention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing constitutional violations occurring under his supervision and due to his failure to adequately train his employees; (3) routine warrantless arrest and incarceration of citizens without charges being filed amounted to a policy or custom; and (4) such policy was the significant moving force behind the arrestee's illegal detention. (Valencia County Sheriff's Office, Valencia County Detention Center, New Mexico)

2014

U.S. District Court
QUALIFIED IMMUNITY

Baggett v. Ashe, 41 F.Supp.3d 113 (D.Mass. 2014). A former female inmate and current female inmates brought a class action against a sheriff and an assistant superintendent pursuant to § 1983, alleging that the policy of permitting male officers to videotape female inmates being strip-searched violated the Fourth Amendment. The defendants moved for summary judgment and the plaintiffs moved for partial summary judgment. The district court granted the inmates' motion and denied the defendants' motion. The court held that strip searches of female inmates being transferred to a segregation unit while male officers conducted videotaping in the vicinity were unreasonable in violation of the Fourth Amendment, regardless of whether the officers actually viewed the inmates, where the inmate being searched was fully aware that a male officer was videotaping her, the officer was within the inmate's view just a few feet away, the inmate was required to strip and manipulate her body in the officer's presence, including lifting her breasts and spreading her legs, and the videotaping by male officers was not limited to urgent situations. The court found that the policy did not have a reasonable relationship with a legitimate penological interest, and therefore, the policy was unconstitutional in violation of the Fourth Amendment as applied to the inmates, regardless of whether the officers actually viewed the inmates. The court noted that the policy of using males to tape searches applied to all strip searches upon transfer, not just emergencies, the prison did not have staffing problems, permitting males to tape the searches did not enhance employment opportunities, and the policy did not provide for alternatives. According to the court, clearly established law prohibited male officers from viewing female inmates during a strip search, and therefore, the sheriff and assistant superintendent were not entitled to qualified immunity in female inmates' § 1983 class action. (Western Regional Women's Correctional Center, Massachusetts)

U.S. Appeals Court
QUALIFIED IMMUNITY

Ellis v. Houston, 742 F.3d 307 (8th Cir. 2014). African American corrections officers brought an action under § 1981 and § 1983 against prison administrators and supervisors, alleging race based harassment and retaliation, and disparate treatment. The district court granted summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the officers had a subjective belief that the discrimination and harassment they experienced was severe and pervasive; (2) the officers established a broad pattern of harassment, and thus specific individual acts had to be viewed as illustrative; (3) the acts, comments, and inaction by a supervisor were purposeful and objectively actionable; (4) the officers suffered materially adverse consequences after they filed an official complaint, as required for a retaliation claim; (5) supervisors who permitted and participated in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity. The court noted that the officers experienced anxiety, dread, and panic attacks, they felt like they were being treated more like inmates than fellow officers, they initially enjoyed going to work but subsequently found their job to be depressing and anxiety-producing due to discrimination and harassment, they felt personally at risk because they no longer trusted that their fellow officers would come to their aid in a dangerous situation, and one officer's hair started to fall out from the stress he suffered. The officers had alleged that they experienced racist remarks on a near daily basis, that supervisors had been present and laughing without objection to statements made by others, and each officer became aware of offensive remarks

even if each individual did not hear it first-hand. Supervisors allegedly acted to intensify the pattern of harassment of African American corrections officers after they filed an official complaint of a racially hostile environment, subsequently assigning them inferior or less desirable jobs, “papering” their files with reports on trivial or invented misconduct, and singling them out for additional work details and consistently forcing them to take unpopular details. The court held that these were materially adverse employment actions sufficient to support the officer's prima facie case of retaliation under § 1981.

The court found that a reasonable prison supervisor would have understood that permitting and participating in racially derisive remarks, and then assigning inferior work assignments for reporting such conduct, would have violated the rights of the African American corrections officers, and thus the supervisors who did permit and participate in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity to the officers' hostile work environment and retaliation claims under § 1981 and § 1983. (Nebraska State Penitentiary)

U.S. Appeals Court
QUALIFIED IMMUNITY

Estate of Booker v. Gomez, 745 F.3d 405 (10th Cir. 2014). The estate of deceased pretrial detainee who died while in custody after officers restrained him in his response to his alleged insubordination, brought a § 1983 action in state court against the deputies and a sergeant, alleging excessive force, deprivation of life without due process, and failure to provide immediate medical care. Following removal to federal court, the district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court affirmed. The appeals court held that the detainee's right to be free from excessive force, including use of a neck restraint, stun gun, and pressure on his back while he was on his stomach and not resisting, was clearly established, for purposes of determining whether the deputies and sergeant were entitled to qualified immunity. According to the court, a reasonable officer would know that failing to check a pretrial detainee's vital signs or provide immediate medical attention after he was rendered unconscious by the use of force, which allegedly included at least a two-minute neck hold, 140 pounds of pressure on his back, and the use of stun gun for eight seconds, was deliberate indifference. (Downtown Detention Center, Denver, Colorado)

U.S. Appeals Court
ABSOLUTE IMMUNITY
PROSECUTORIAL
IMMUNITY

Fields v. Wharrie, 740 F.3d 1107 (7th Cir. 2014). A former prisoner who was wrongfully convicted of murder and sentenced to death brought an action against, county prosecutors, among others, alleging a § 1983 claim of violation of his due process rights and related state tort claims. The former prisoner had been incarcerated for 17 years before the conviction was overturned. The district court partially granted and partially denied a defense motion to dismiss. The defendants appealed. The appeals court reversed and remanded. On remand, the former prisoner moved for reconsideration. The district court granted the motion for reconsideration and vacated its prior order to the extent that it dismissed the former prisoner's federal claim against prosecutor arising from the prosecutor's pre-prosecution fabrication of evidence, and retained jurisdiction over the state claims. The prosecutors appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the prosecutor did not have absolute or qualified immunity from § 1983 claims arising out of his pre-prosecution fabrication of evidence that was later introduced at trial; (2) the prosecutor did not have absolute immunity under Illinois law for his pre-prosecution fabrication of evidence that was later introduced at trial; and (3) remand was required to allow reconsideration of the determination that the prosecutor did not have immunity from state law claims arising out of use of fabricated evidence at retrial. The court noted that absolute immunity afforded to prosecutors is only for acts they commit within the scope of their employment as prosecutors; when they do non-prosecutorial work they lose their absolute immunity and have only qualified immunity. (Illinois)

U.S. District Court
DAMAGES

Fouch v. District of Columbia, 10 F.Supp.3d 45 (D.D.C. 2014). A detainee, who allegedly suffered severe injuries from collision between two police vehicles, one of which he was riding in, handcuffed behind the back and without a seat belt or harness, while being transported between police stations for processing of a misdemeanor threat charge, brought an action against the District of Columbia and the two officers who had been driving the vehicles. After the court dismissed claims against the officer who had been driving the other vehicle, the District and the remaining officer filed a motion for partial dismissal. The district court granted the motion for partial dismissal in part and denied in part without prejudice. The court held that the District of Columbia could not be held liable for damages under § 1983. (District of Columbia Metropolitan Police Department, Central Booking Division)

U.S. District Court
BIVENS CLAIM

Haley v. Tryon, 12 F.Supp.3d 573 (W.D.N.Y. 2014). A former detainee brought an action against federal detention facility officials and four nonfederal officers, alleging failure to protect him and denial of proper medical treatment, in violation of his rights pursuant to the Eighth and Fourteenth Amendments. The defendants moved to dismiss. The district court granted the motion. The court held that the detainee's complaint failed to allege that a field office director and an assistant field officer director were personally involved in any constitutional violation, as required to state a Bivens claim. (Buffalo Federal Detention Facility, New York)

U.S. District Court
INSURANCE

LCS Corrections Services, Inc. v. Lexington Ins. Co., 19 F.Supp.3d 712 (S.D.Tex. 2014). An insured prison operator brought an action seeking declaratory judgment that an insurer had a duty under a commercial umbrella liability policy to defend it in an underlying civil rights action. The underlying case was brought by the representative of a deceased inmate who allegedly died because of the operator's policy of not giving inmates their scheduled medications. The insurer moved for partial summary judgment. The district court granted the motion. The court held that the underlying claim for refusing to provide prescribed medications fell within the scope of the policy's professional liability exclusion, despite the operator's contention that the claim addressed administrative rather than professional conduct because it was a global administrative decision to deprive inmates of that particular medical care, where the exclusion extended to “failure to provide professional services.” (Lexington Insurance Company, LCS Corrections Services, Inc., Texas)

U.S. District Court
QUALIFIED IMMUNITY

Liska v. Dart, 60 F.Supp.3d 889 (N.D. Ill. 2014). A pretrial detainee brought an action against a county and a county sheriff, alleging under § 1983 that the defendants deprived him of liberty without procedural due process, and asserting claims under state law for false imprisonment and intentional infliction of emotional distress. The defendants moved to dismiss the case for failure to state a claim. The district court granted the motion in part and denied in part. The court held that: (1) as a matter of first impression, the detainee had a liberty interest protected by procedural due process in remaining on home confinement; (2) the defendants violated the detainee's procedural due process rights; (3) the detainee sufficiently stated the sheriff's personal involvement in the alleged procedural due process violation; and (4) the sheriff was not entitled to qualified immunity. The court noted that the pretrial detainee had a liberty interest protected by procedural due process in remaining on home confinement, and thus the county and county sheriff were required to afford the detainee procedural due process prior to transferring the detainee to jail due to his alleged violation of the terms of home confinement. The detainee alleged that the sheriff was responsible for implementing the cell-box system used in the detainee's home during his home confinement, that the sheriff was aware of issues with the type and brand of system assigned to the detainee and many other home detainees, that the sheriff knew or should have known of the malfunctions of the system in the detainee's home, and that the sheriff allowed the detainee's incarceration in the county jail for violation of the terms of his home confinement despite knowledge of numerous false alarms registered by the system. (Cook County Sheriff's Department, Cook County Jail)

U.S. Appeals Court
ELEVENTH AMENDMENT
SOVEREIGN IMMUNITY

Morris v. Livingston, 739 F.3d 740 (5th Cir. 2014). A state inmate, proceeding pro se, brought a § 1983 action against a governor, challenging the constitutionality of a statute requiring inmates to pay a \$100 annual health care services fee when they receive medical treatment. The district court dismissed the action. The inmate appealed. The appeals court affirmed. The appeals court held that: (1) the governor was entitled to Eleventh Amendment sovereign immunity where the state department of criminal justice was the agency responsible for administration and enforcement of the statute; (2) allegations were insufficient to plead deliberate indifference where the inmate did not allege he was denied medical care or that he was forced to choose between medical care or basic necessities; (3) the inmate received sufficient notice that he would be deprived of funds; and (4) it was not unreasonable for the prison to take funds from the state inmate's trust fund account to pay for medical care. The court noted that the prison posted notices about the statute, the notices informed inmates of the fee and what it covered, and a regulation was promulgated that provided additional notice. (Texas Department of Criminal Justice, Stevenson Unit, Cuero, Texas)

U.S. Appeals Court
QUALIFIED IMMUNITY

T.S. v. Doe, 742 F.3d 632 (6th Cir. 2014). Parents, on behalf of their minor children, brought a § 1983 action against the superintendent of a juvenile detention center, correctional officers, and other administrators, claiming that the suspicionless strip search of the juveniles, as part of the intake process of the detention center, violated the juveniles' Fourth Amendment rights. The district court granted summary judgment for the parents. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the right of juvenile detainees held on minor offenses to be free from suspicionless strip searches was not clearly established at time the two juveniles arrested for underage drinking were strip searched, and thus, correctional officers who conducted searches were protected by qualified immunity from liability in the § 1983 action arising from the searches. The court noted that prior court decisions had recognized that a strip search of a person arrested for a minor offense was unreasonable, given that subsequent court decisions had found that state's enhanced responsibility for juveniles supported strip searches, and a recent Supreme Court decision had concluded that the Fourth Amendment did not prohibit strip search of all adult criminal detainees. The court found that under Kentucky law, the correctional officers' strip searches of the two juveniles, as part of the intake process of a juvenile detention center, were ministerial acts, and thus, the officers were not eligible for qualified official immunity from liability on the juveniles' claims of negligence, invasion of privacy, assault, false imprisonment, grossly negligent infliction of emotional distress, and arbitrary action in violation of state constitution, even if officers were both acting in good faith and within scope of their employment. (Breathitt Regional Juvenile Detention Center, Kentucky)

U.S. Appeals Court
ABSOLUTE IMMUNITY

Thornton v. Brown, 757 F.3d 834 (9th Cir. 2014). A state parolee filed a civil rights action against the Governor of the State of California, Secretary of Corrections, and parole personnel to challenge the imposition and enforcement of a residency restriction and a requirement that he submit to electronic monitoring using a Global Positioning System (GPS) device as conditions of his parole. The district court dismissed the action. The parolee appealed. The appeals court reversed and remanded. The court held that: (1) neither absolute nor qualified immunity barred the parolee's civil rights claims against the State of California, Secretary of Corrections, and parole personnel that were limited to injunctive relief; (2) absolute immunity barred the state parolee's civil rights claims for damages against his parole officers for imposing allegedly unconstitutional parole conditions; (3) absolute immunity did not extend to the state parolee's civil rights claim that parole officers enforced conditions of his parole in an unconstitutionally arbitrary or discriminatory manner; and (4) the parolee could challenge a condition of parole under § 1983 if his or her claim, if successful, would neither result in speedier release from parole nor imply, either directly or indirectly, the invalidity of criminal judgments underlying that parole term. (California Department of Corrections and Rehabilitation)

U.S. District Court
QUALIFIED IMMUNITY

Turner v. Hamblin, 995 F.Supp.2d 859 (W.D.Wis. 2014). A pro se prisoner brought an action against various prison officials, alleging that the officials violated his rights under the Free Exercise Clause by failing to provide services to Muslim prisoners when an outside volunteer was not available to lead the service. The prison officials moved for summary judgment. The district court granted the motion. The court held that the prison officials were entitled to qualified immunity on the prisoner's claim, where the law was not clearly established that the Free Exercise Clause required prison officials to hold religious services for prisoners if no qualified non-prisoners were available to lead the service. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
PROSECUTORIAL
IMMUNITY

Villars v. Kubiowski, 45 F.Supp.3d 791 (N.D.Ill. 2014). A detainee, a Honduran citizen who had been arrested for driving under the influence and fleeing officers after they effectuated a traffic stop of his vehicle, and subsequently had been held on an immigration detainer from Immigration and Customs Enforcement (ICE) and then on a federal material witness warrant, brought a pro se action against a village, police chief, police officers, sheriff, jail deputies, and an Assistant United States Attorney. The detainee alleged violation of his due process, equal protection, Fourth Amendment, and Eighth Amendment rights. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The district court held that: (1) the detainee stated a claim against the village defendants for violation of his Fourth Amendment and due process rights in connection with his detention after he had posted bond; (2) the detainee stated a claim for violation of his consular rights under Article 36 of the Vienna Convention on Consular Relations; (3) the detainee stated a claim against the county defendants for violation of his Fourth Amendment and due process rights in connection with his 29-hour detention; and (4) absolute prosecutorial immunity did not shield the AUSA from the plaintiff's claims that the AUSA violated his Fourth Amendment and due process rights, along with the federal material witness statute and the federal rules of criminal procedure. The court noted that following the detainee's post-arrest transfer to the county's custody, he was detained for approximately 29 hours pursuant to an Immigration and Customs Enforcement (ICE) detainer request, and that the county lacked probable cause that the detainee had violated a federal criminal law, but instead detained him while the federal government investigated to determine whether or not he had, in violation of the detainee's Fourth Amendment and procedural and substantive due process rights. (Village of Round Lake Beach, Lake County Jail, Illinois)

2015

U.S. Appeals Court
QUALIFIED IMMUNITY

Coley v. Lucas County, Ohio, 799 F.3d 530 (6th Cir. 2015). The administrator of a pretrial detainee's estate brought a state court action against a county, county sheriff, police officer and police sergeant, alleging § 1983 violations of the detainee's constitutional rights and various state law claims. The district court denied the defendants' motions to dismiss and denied individual defendants' requests for qualified immunity. The defendants appealed. The appeals court affirmed. The court held that a police officer's act of shoving a fully restrained pretrial detainee in a jail booking area, causing the detainee to strike his head on the wall as he fell to the cement floor without any way to break his fall, constituted "gratuitous force" in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the detainee's state of being handcuffed, in a belly chain and leg irons, led to a reasonable inference that the officer's actions were a result of his frustration with the detainee's prior restraint behavior, since the detainee was not in any condition to cause a disruption that would have provoked the officer to use such force. The court held that the police officer was on notice that his actions were unconstitutional, and therefore he was not entitled to qualified immunity from liability under § 1983. According to the court, the officer's attempts to cover up the assault by filing false reports and lying to federal investigators following the death of the detainee led to a reasonable conclusion that the officer understood that his actions violated the detainees' clearly established right not to be gratuitously assaulted while fully restrained and subdued.

The court held that a police sergeant's continued use of a chokehold on the unresisting, fully-shackled pre-trial detainee, after hearing the detainee choke and gurgle, and when a fellow officer was urging him release his chokehold, was objectively unreasonable, in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the sergeant's subsequent acts of telling other officers to leave the medical cell after the detainee was rendered unconscious, failing to seek medical help, and refusing to mention the use of a chokehold in incident reports, led to the inference that the sergeant was aware he violated the law and sought to avoid liability. According to the court, the police sergeant was on notice that his actions were unconstitutional, and therefore, he was not entitled to qualified immunity under § 1983.

The court found that the county sheriff could be held personally liable under § 1983, based on his failure to train and supervise employees in the use of excessive force, the use of a chokehold and injuries derived therefrom, and to ensure that the medical needs of persons in the sheriff's custody were met. According to the court, evidence that the sheriff helped his employees cover up their unconstitutional actions by making false statements to federal officials about his knowledge of his employees' assault, chokehold, and deliberate failure to provide medical attention to the detainee demonstrated that the sheriff at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending employees. The court noted that under Ohio law, allegations by the estate of the pretrial detainee that the county sheriff had full knowledge of the assault but intentionally and deliberately made false statements to federal officials were sufficient to state a claim that the sheriff ratified the conduct of his officers and, thus, was potentially personally liable for his officers' actions. The court concluded that the officers' use of excessive force, failure to provide medical care, assault and battery, and wrongful death could be imputed to the sheriff in his official capacity since the sheriff's false statements to federal investigators were a position that was inconsistent to non-affirmance of the officers' actions. (Lucas County Jail, Ohio)

U.S. District Court
SOVEREIGN IMMUNITY

Collazo-Perez v. Puerto Rico, 100 F.Supp.3d 88 (D.P.R. 2015). A Puerto Rico prisoner brought a pro se § 1983 action against the Commonwealth of Puerto Rico, the head of a prison's security, and others, alleging his prison transfer violated his civil rights. The prisoner sought \$75,000 to compensate him for damages suffered. The defendants moved to dismiss and the district court granted the motion. The court held that the prisoner's allusions to negligence on the part of prison's head of security in immediately transferring the prisoner to another institution, after confidential information about which the prisoner was the author was disseminated to the penal population, were insufficient to state a due process claim that the security head and others endangered the prisoner. According to the court, the prison's head of security had sovereign immunity from the prisoner's § 1983 suit, where the head of security was at all times acting within the scope of his employment, and in his official capacity. (Bayamon Penal Complex, Puerto Rico)

U.S. Appeals Court
SOVEREIGN IMMUNITY

Crabbs v. Scott, 786 F.3d 426 (6th Cir. 2015). An acquitted defendant brought an action against a sheriff in his official capacity under § 1983 for violation of the Fourth and Fourteenth Amendments, arising out of the sheriff's requiring him to submit to a cheek swab for a DNA sample before he could be released from jail, after he was acquitted of felony charges by a jury. The district court denied the sheriff's motion for summary judgment based on sovereign immunity and the sheriff appealed. The appeal court affirmed, finding that the sheriff was generally considered a county official and thus not afforded immunity as a state actor, and the sheriff was not required by state law to collect defendant's DNA prior to releasing him from jail following his acquittal, and thus the sheriff was acting as a county official and not entitled to immunity. (Franklin County, Ohio)

U.S. District Court
DUE PROCESS
RELEASE
SENTENCE

Hayden v. Keller, 134 F.Supp.3d 1000 (E.D.N.C. 2015). A prisoner, a non-homicide juvenile offender, brought a § 1983 action against a parole commission and others, alleging denial of his constitutional right to be free from cruel and unusual punishment and due process under the Eighth and Fourteenth Amendments as a result of being denied a meaningful opportunity to obtain parole release. The parties moved for summary judgment. The district court denied the defendants' motion and granted the prisoner's motion in part. The court held that the prisoner was denied a meaningful opportunity to obtain parole release based on demonstrated maturity and rehabilitation, as required by the Eighth Amendment. According to the court, the parole commissioners and case analysts did not distinguish parole reviews for juvenile offenders from adult offenders, thus failing to consider the children's diminished culpability and heightened capacity for change. The court noted that caseloads were enormous, with each parole case analyst having responsibility for approximately 4,338 offenders, and the opportunity to appear for a parole hearing seemed to exist mainly for those who were on notice, with no notice to the offender being required. (North Carolina Post-Release Supervision and Parole Commission, and North Carolina Department of Public Safety)

U.S. District Court
QUALIFIED IMMUNITY

Hobbs v. Powell, 138 F.Supp.3d 1328 (N.D. Ala. 2015). The personal representative of a jail inmate's estate filed suit against the county sheriff, the captain in charge of jail guards, guards, and the physician contracted to provide health care services for the jail population, asserting claims for wrongful death, deliberate indifference to the inmate's serious medical needs, and a state law claim against the physician for medical malpractice. The jail defendants filed a motion to dismiss on the grounds of immunity, and the physician filed a motion to dismiss for failure to state claims. The district court denied the motions. The court held that: (1) the amended Alabama statute that extended qualified immunity of a sheriff and sheriff's deputies to corrections officers working in sheriffs' jails was a constitutionally permissible exercise by Alabama Legislature of its broad police power; (2) immunity under Alabama's Jailer Liability Protection Act required findings that jail personnel were acting within the scope of their official duties and that they were acting in compliance with law; (3) the personal representative adequately alleged the inmate's serious medical need; (4) the personal representative adequately alleged that the physician had subjective knowledge of, but failed to treat the inmate for an abscessed tooth; (5) the personal representative adequately alleged that the physician's failure to examine or provide any treatment to the inmate for an abscessed tooth was the cause of the inmate's death; and (6) the allegations stated a claim against the physician for medical malpractice under the Alabama Medical Liability Act. The personal representative alleged that the inmate submitted medical request forms through jail personnel for treatment of an abscessed tooth, that the physician ignored the requests, that a toothache caused noticeably severe swelling that required immediate medical attention, that inmate's pain and swelling was such that any reasonable person would know that he required immediate medical attention, and that, at some time before the inmate's release from jail several days later, the physician and/or agents of the entity that provided physician services to the jail observed the inmate through the window of a locked door but did not examine him in any way or refer him for any care. The inmate died at a hospital within hours after being released from the jail. (Winston County Jail, (Correctional Managed Care Consultants, LLC, and Winston County Jail, Alabama)

U.S. District Court
QUALIFIED IMMUNITY

Pena v. Greffet, 110 F.Supp.3d 1103 (D.N.M. 2015). A female prison inmate brought an action under § 1983 for numerous violations of her constitutional rights, including under the Fourth, Eighth, and Fourteenth Amendments against employees of the contractor that operated the correctional facility, and against the contractor under the theory of vicarious liability, for alleged physical and sexual assault by employees while she was incarcerated. The defendants moved for judgment on the pleadings. The district court denied the motion. The court held that the "aided-in-agency" theory of vicarious liability applied to the female prison inmate's claims under § 1983 against the contractor after the contractor's employee repeatedly sexually assaulted the inmate. According to the court, the employee's relationship with the inmate by virtue of his employment conferred "extraordinary power" upon him, the employee's authority to do as he wished appeared to be delegated to him, and the inmate was unlikely to be able to successfully complain about the employee's actions. The court noted that the issue of whether the employer was vicariously liable for the employee's repeated rape and sexual assault of the inmate was for a jury to decide in the inmate's claim under § 1983 for violations of numerous constitutional rights, including the right to bodily integrity under the Fourteenth Amendment. The court found that while state-employee prison guards are entitled to qualified immunity against federal suits under § 1983, private prison guards receive no such benefit. (New Mexico Women's Correctional Facility, operated by Corrections Corporation of America)

U.S. District Court
ELEVENTH AMEND-
MENT
QUALIFIED IMMUNITY

Purvis v. City of Atlanta, 142 F.Supp.3d 1337 (N.D. Ga. 2015). An arrestee brought a § 1983 action against a city, county, and the county sheriff, asserting claims for unlawful arrest and detention in violation of the Fourth and Fourteenth Amendments. The arrestee alleged that, following his lawful arrest for drinking in public, he was unlawfully held by the city and county for an additional five to six days on an invalid warrant. The city, county, and sheriff moved to dismiss. The district court granted the motion and denied in part. The court held that: (1) the allegation was insufficient to establish a pattern or practice on the part of the county or city arising out of an official policy or custom; (2) the sheriff, in his official capacity, was entitled to Eleventh Amendment immunity; (3) the allegations were sufficient to support an inference that the sheriff directed subordinates to act unlawfully; (4) the sheriff was not entitled to qualified immunity from the claim for violation of the arrestee's due process right to

timely release; and (5) the sheriff was entitled to qualified immunity from the claim alleging violation of the arrestee's Fourth Amendment rights. (Atlanta City Detention Center, Fulton County Jail, Georgia)

U.S. District Court
SCREENING
MEDICAL SCREENING

Sanders v. Glanz, 138 F.Supp.3d 1248 (N.D. Okla. 2015). A pretrial detainee's guardian filed a § 1983 action against a sheriff, the jail's private healthcare providers, and a booking nurse to recover for injuries that the detainee suffered from a severe assault by fellow prisoners. The defendants filed for dismissal. The district court granted the motions in part and denied in part. The court held that the detainee, who had been assaulted by other county jail inmates, stated a plausible municipal liability claim under § 1983 against the corporation that assisted in developing the sheriff's policies with respect to medical and mental health care of inmates, where the detainee alleged that the corporation shared responsibility with the sheriff to adequately train and supervise its employees, and that the corporation's policies, practices, and customs posed substantial risks to inmates' health and safety, but failed to take reasonable steps to alleviate those risks. (David L. Moss Criminal Justice Center, Tulsa County Sheriff, Oklahoma, Correctional Healthcare Management, Inc. and, Correctional Healthcare Management of Oklahoma, Inc.)

U.S. Appeals Court
GOVERNMENTAL
IMMUNITY

Shadrick v. Hopkins County, Ky., 805 F.3d 724 (6th Cir. 2015). The mother of deceased inmate brought a § 1983 action against a county and a medical provider, which contracted with county to provide medical services to county inmates, alleging that the medical provider's failure to train and supervise its nurses violated the inmate's constitutional right to adequate medical care and that the medical provider was negligent under state law. The twenty-five year old inmate had entered the jail to serve a short sentence for a misdemeanor offense. He died three days later from complications of an untreated methicillin-resistant staphylococcus aureas (MRSA) infection. The district court granted summary judgment in favor of the medical provider. The mother appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the medical provider's training program was inadequate, whether the inadequacy resulted from its deliberate indifference to inmate's right to adequate medical care, and whether the inadequacy caused, or was closely related to, the inmate's death. The court noted that the nurses were required to make professional judgments outside their area of medical expertise, and unless training was provided, the nurses lacked knowledge about the constitutional consequences of their actions or inactions in providing medical care to inmates. The court found that the medical provider did not derive its existence and status from the county, and thus was not entitled to share the county's governmental immunity on a Kentucky negligence claim. The court noted that nearly all of the inmate's medical conditions-- high blood pressure, rheumatoid arthritis, gout, osteoporosis, and staph infection-- had been diagnosed by a private physician as mandating treatment, and deputy jailers could tell that the inmate needed prompt medical treatment even though they did not have the same medical training as the nurses who were employed at the county jail. (Hopkins County Detention Center, Southern Health Partners, Inc., Kentucky)

U.S. Supreme Court
QUALIFIED IMMUNITY

Taylor v. Barks, 135 S.Ct. 2042 (2015). The widow of a deceased inmate brought a § 1983 action against the commissioner of a state department of correction (DOC), the warden of a state correctional institution, and others, alleging that they violated the Eighth Amendment in failing to prevent the inmate's suicide. The district court denied the commissioner's and warden's motion for summary judgment based on qualified immunity. The commissioner and warden appealed. The appeals court affirmed. The U.S. Supreme Court reversed, finding that any right of an incarcerated person to proper implementation of adequate suicide prevention goals was not clearly established at the time of the inmate's death, and, thus, the commissioner and warden were qualifiedly immune from the widow's claim. (Howard R. Young Correctional Institution, Delaware)

SECTION 25: INTAKE AND ADMISSIONS

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1970

U.S. District Court
MEDICAL
SCREENING
Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). Lack of medical intake survey upon inmate's arrival at the jail contributes to court's finding of constitutional violation. (Orleans Parish Prison, Louisiana)

1971

U.S. District Court
CLASSIFICATION
TELEPHONE
MEDICAL
SCREENING
Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Court orders a classification system to be implemented on admission to the jail. Inmates are to be allowed at least two telephone calls during admissions process. Jail is required to have a physician on call and to examine "entering prisoners." (Lucas County Jail, Ohio)

1972

U.S. District Court
RULES
Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Inmate rules shall be reviewed and revised into a clear concise form and shall be distributed to each inmate upon his commitment. (Orleans Parish Prison, Louisiana)

1973

U.S. District Court
SCREENING
Goldsbey v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Each inmate shall have a history taken and an examination upon entering the jail. (Jackson County Jail)

U.S. District Court
BEDDING
Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Clean mattress covers, blankets and towels will be provided upon admission and cleaned, washed or repaired at reasonable intervals. (St. Louis County Jail, Missouri)

1975

U.S. District Court
MEDICAL
SCREENING
Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). All persons detected at intake as having communicable diseases or other serious medical problems shall be quarantined to be sent immediately to a local hospital or other medical institution for treatment. Jail officials shall establish a regular medical intake screening procedure, and no incoming inmate shall be housed in the jail until he has been medically examined and approved. (Harris County Jail, Texas)

1976

U.S. District Court
MEDICAL
SCREENING
Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. VI. 1976). Medical services shall be provided only by appropriately trained personnel. A thorough medical exam shall be given to each inmate as part of intake and classification. A dentist shall be available on call. A mental status exam is to be given as part of intake procedure. (Golden Grove Adult Correctional Facility, Virgin Islands)

- U.S. District Court
CLOTHING
TOWELS
- Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Inmates without adequate clothing shall be furnished clothing within eight hours of booking and shall have available a daily change of clean clothes. Clean towels and washcloths shall be issued to inmates within eight hours of booking and shall be frequently laundered. (Escambia County Jail, Pensacola, Florida)
- 1977
- U.S. District Court
RULES
HYGIENE ITEMS
PSYCHOLOGICAL
SCREENING
- Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Each detainee shall receive a copy of all rules and regulations. Detainees shall receive upon admission all items which are necessary for personal hygiene, including but not limited to: soap, toothpaste, razor, sanitized mattress and pillow, shirt and pants, clean sheets, blankets and towels. Screening officer shall inquire as to detainee's need for psychological or counseling care and shall report to the correctional staff. So far as practicable, pretrial detainees shall not be housed in the same cell with convicted persons. Juveniles may not be housed in the jail for longer than it takes to arrange to transfer them. (Platte County Jail, Missouri)
- 1978
- U.S. District Court
TELEPHONE
- O'Bryan v. Saginaw, 446 F.Supp. 436 (E.D. Mich. 1978). Telephone calls are to be allowed on admissions, return from court and at least ten minutes per week. Newly admitted inmates are to be given the opportunity to contact attorney, family, bondsmen and others on and after admission. (Saginaw County Jail, Michigan)
- 1979
- U.S. District Court
MEDICAL
SCREENING
- Feliciano v. Barcelo, 497 F.Supp. 14 (D.P.R. 1979). All inmates are to receive a physical examination within one week of receipt at the institution. Proper medical records are to be kept. Adequate medical facilities and equipment are to be achieved and maintained. (Correctional System, Puerto Rico)
- U.S. District Court
MEDICAL
SCREENING
- Holly v. Rapone, 476 F.Supp. 226 (E.D. Penn. 1979). Prisoner underwent withdrawal symptoms and received no treatment until twenty-four hours after the onset of symptoms. This was not deliberate indifference to known medical needs because treatment was rendered within the stated time limit according to state law. (Delaware County Prison, Pennsylvania)
- 1980
- State Appeals Court
MEDICAL
SCREENING
- Burns v. Town of Leesville, 383 So.2d 109 (Ct. App. La. 1980). Court of appeals affirms judgment against pretrial detainee. The plaintiff, Bill Burns, was arrested and charged with drunkenness and was admitted to the Leesville City Jail. He was assigned an upper bunk in a double cell. After several hours, he attempted to leave the bunk and fell across the bottom bunk, striking his back on its metal railing. He said that he was not able to move after his fall, requested medical attention several times, and it was refused. Burns was released from custody the following morning and sought treatment for his back. His injuries were diagnosed as a contusion, abrasion and acute sprain, and he spent several days in the hospital. Burns filed suit against the town of Leesville, the chief of police, and the Village of New Llano (where he was initially arrested), claiming they were responsible for his injuries. The plaintiff claimed that the defendants should not have placed him in an upper bunk because of his physical condition, and that they were negligent in failing to provide medical services. The defendants argued that the plaintiff was negligent in attempting to get down from his bunk and should be held responsible for his own actions. The trial judge concluded that the plaintiff was not unreasonably intoxicated, and was therefore responsible for his actions. The appeals court concurred, and ordered Burns to pay all court costs. (Leesville City Jail, Louisiana)
- U.S. District Court
MEDICAL
SCREENING
- Inmates of Allegheny County Jail v. Pierce, 487 F.Supp. 638 (W.D. Penn. 1980). The court issued an extensive order regarding the provision of medical care to jail inmates. The order requires that there be a nurse on duty at the jail every shift, that all incoming inmates receive medical screening and that the medical staff rather than the guard staff dispense medication. (Allegheny County Jail, Pennsylvania)
- U.S. District Court
MEDICAL
SCREENING
MEDICATION
- Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Trustees are not to pass medication. The jail personnel are to be trained in emergency medical care. All incoming inmates are to be tested for venereal disease and tuberculosis, and those individuals showing positive test results are to be segregated from the rest of the inmate population. There is no requirement that a professional medical staff be hired

because the jail is too small to justify such. However, all guards are to be given some training in diagnosis, and all decisions refusing to permit an inmate to see a physician are to be reviewed by trained personnel within twenty-four hours. All incoming inmates are to complete a health screening form. (Choctaw County Jail, Alabama)

U.S. Appeals Court
MEDICAL
SCREENING

Wood v. Woracheck, 618 F.2d 1225 (7th Cir. 1980). Where the inmate at the time of his booking complains of physical injuries, some of which are clearly visible, the jail staff is deliberately indifferent in failing to seek medical care for the inmate for a considerable period of time. (City Jail, Milwaukee, Wisconsin)

1981

U.S. Appeals Court
MEDICAL
SCREENING

Lareau v. Manson, 651 F.2d 96 (2nd Cir. 1981). Adopting most of the findings of the district court, the United States of Appeals for the Second Circuit has ordered major reforms in the Hartford Community Correctional Center (HCCC), dealing generally with overcrowding. The constitutional standard for the legality of conditions of confinement is different for pretrial detainees and for convicted inmates. For pretrial detainees, the test is whether the conditions amount to punishment without due process in violation of the fourteenth amendment. With respect to convicted inmates, the criterion is whether the punishment is cruel and unusual as defined under the eighth amendment.

Reviewing the numerous findings of the district court, the appellate court looked to the supreme court case of Bell v. Wolfish, 441 U.S. 520. Viewing overcrowding at the HCCC as related to pretrial detainees, the court cited the following standard of whether such conditions amount to punishment: "It must be shown that the overcrowding subjects a detainee over an extended period to genuine privation and hardship not reasonably related to a legitimate governmental objective."

Based upon this standard the court found that double-bunking in cells originally designed for one person, compounded by overcrowded dayrooms, imposed unconstitutional punishment on pretrial detainees in all cases except where such hardship was related to a legitimate governmental purpose. The court here found that these hardships promoted neither security nor the effective management of the institution.

Other conditions were even less acceptable. The use of a glass enclosed dayroom (dubbed the "fish tank") as a dormitory room housing numerous inmates on a full time basis was held to amount to punishment and was thus unconstitutional with regard to pretrial detainees. In addition, the placing of mattresses on the floors of cells to accommodate more inmates and the assignment of healthy inmates to medical cells (sometimes with mentally or physically ill cellmates) to alleviate overcrowding were held to constitute impermissible punishment.

The court ordered that all newly admitted inmates, with minor exceptions, be given a medical examination within forty-eight hours of admission. (Hartford Community Correctional Center, Connecticut)

1983

U.S. Supreme Court
SEARCH- PROPERTY

Illinois v. Lafayette, 103 S.Ct. 2605 (1983). U.S. Supreme Court finds inventory search of inmate's property permissible at time of admission. The high court determined that police were allowed to routinely search the personal property of an arrestee at the police station during the admission process, prior to being detained.

The court found that the practical necessities of ensuring the security and safety of the detention facility and property, justified an inventory search as part of the standard process associated with incarceration.

The plaintiff in the case was arrested for disturbing the peace and was taken to a police station where his shoulder bag was searched without a warrant, and its contents were inventoried during the booking process. Subsequently, the plaintiff was charged with illegally possessing controlled substances. The lower court had suppressed the evidence because it viewed the search as invalid. The Supreme Court reversed that decision, concluding that since the search did not rest on probable cause, the absence of a warrant was immaterial to the reasonableness of the search. (Kankakee City Police Department, Illinois)

1984

State Appeals Court
MEDICATION

Harris County v. Jenkins, 678 S.W.2d 639 (Tex. App. 1984). A prisoner who suffers from epilepsy reached a \$20,000 settlement with the State of Texas and was awarded \$40,000 by a state jury because he suffered seizures after his medication was taken from him upon admission to the Harris County Jail. A jury found the sheriff seventy percent liable and the county thirty percent liable for the \$40,000 award. The jury found the sheriff liable not only for withholding the medication, but for failing to forward the prisoner's medical records when he was transferred to a state facility. The verdict was upheld upon appeal. (Harris County Jail, Texas)

U.S. District Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Estate of Cartwright v. City of Concord, Cal., 618 F.Supp. 722 (U.S. D.C., N.D. Cal. 1985). Jail defendants were not liable for a prisoner suicide that occurred after the decedent had "joked" about it with a friend by shouting back and forth between their separate cells. The decedent and his female companion were brought to jail under the influence of alcohol and Valium. The two were laughing, shouting, and joking from their individual cells that they were going to kill themselves. His female friend faked a suicide, and when the jailers responded to it seriously, she bragged out loud that she had fooled them. Thereafter, the jailers increased the frequency of jail inspections. In fact, the decedent was checked about fifteen minutes to a half hour before he was found hanging by a torn bed blanket. The evidence was inconclusive as to whether the decedent was merely trying to fake a suicide, and lost consciousness due to his intoxicated and drugged state, or whether his suicide was actually motivated by serious intentions. Jailers had talked to him earlier and found no reason to believe he was suicidal or depressed. He hung himself by using the edge of his bed to tear a strip off a blanket and tied it around one of the high bars of his cell. The defendants were not liable for failing to prevent the death or for their actions after discovering the hanging. The aid given following the discovering was adequate and so was the investigation of events. (Concord City Jail, California)

U.S. Appeals Court
MEDICAL
SCREENING

Garcia v. Salt Lake County, 768 F.2d 303 (10th Cir. 1985). Although the county had a policy of taking all unconscious arrestees to a hospital, evidence showed that they were routinely admitted to the jail if they were suspected of being intoxicated. In this case, the arrestee was taken to the hospital following a traffic accident. While there he ingested some barbiturates which had been prescribed earlier and escaped while unattended. He was found unconscious in front of the hospital, was examined by a doctor, and then admitted to the jail. He was checked every thirty minutes by an officer, but was not examined by a medic until four hours after admission. He eventually died after being placed on life support systems. The appeals court agreed that jail practices differed from policies, and practices therefore became "policy" for the purpose of determining liability. In this case, the county was held liable for implementing the "policy" and was ordered to pay \$147,000 plus costs. The court noted that eighth amendment protections do not apply until after an adjudication of guilt, but that pretrial detainees are entitled to the same degree of protection and care as convicted offenders under the due process standard (fourteenth amendment). (Salt Lake County Jail, Utah)

State Supreme Court
SUICIDE

Horne v. Beason, 331 S.E.2d 342 (S.C. 1985). City is not liable for the suicide of a seventeen-year-old prisoner. After his arrest for charges of driving with a suspended license and operating an uninsured motor vehicle, a seventeen-year old arrestee was admitted to detention in a city lockup. Although he was wearing only a bathing suit and a bathrobe, staff did not identify him as a potential suicide risk. About thirty-five minutes after admission to his cell he was found dead, hanging from the overhead bars. The judge determined that the city should not be held liable for the suicide, stating:

...Jailors, like others, are expected to perform their duties, avoid negligence and foresee that certain acts might cause injury to others. A jailor, however, is not expected to be a fortuneteller or psychologist or psychiatrist. To require a jailor to foresee that a person incarcerated under circumstances described hereinabove would commit suicide would require of him capabilities, characteristics and genius unknown to the ordinary, reasonably prudent jailor.

The judge also noted that he could not hold the city liable because it was immune from the suit under a doctrine of sovereign immunity established in McCall v. Batson, 329 S.E.2d 741 (S.C. 1985) which held that governmental entities which did not have liability insurance (such as this city) are immune from suit until July, 1986. (Greer City Jail, South Carolina)

U.S. Appeals Court
SEARCH

Jones v. Edwards, 770 F.2d 739 (1st Cir. 1985). Strip search of arrestee found unconstitutional; case remanded to determine damages. The U.S. Court of Appeals for the Eighth Circuit concluded that a lower court erred in failing to grant the plaintiff's motion for judgment, remanding the case for determination of compensatory damages. The court declined to allow the award of punitive damages. The plaintiff was arrested for allowing his dog to run loose. During booking procedures, the uncooperative arrestee was subjected to a visual strip search. Guided by Bell v. Wolfish, the court concluded that the search violated the plaintiff's fourth amendment rights. The court noted that the plaintiff's offense was "hardly the sort of crime to inspire officers with the fear of introducing weapons or contraband into the holding cell." The officers did not have any reason to suspect the plaintiff was harboring contraband. While acknowledging the importance of security procedures, the court concluded that "...security cannot justify the blanket deprivation of rights of the kind incurred here."

U.S. Appeals Court
SUICIDE
SCREENING

Partridge v. Two Unknown Police Officers, 751 F.2d 1448 (5th Cir. 1985). An arrestee apparently became violent and agitated when he was arrested, attempting to kick the doors and windows out of the police car in which he was transported. By the time he arrived at the city jail he was composed, and the transporting officers did not call attention to his behavior during booking. The booking officer did not check the prisoner's previous record, which showed a prior suicide attempt. The prisoner's father told officials that his son was unstable, and the son was wearing medical alert bracelets. The prisoner was placed in solitary confinement, where he hanged himself within a few hours of his arrest. The parents sued the City of Houston, and the Circuit Court of Appeals ruled that their suit alleged a legitimate constitutional claim because the city had been deliberately indifferent to the prisoner's serious medical needs, determining that suicidal behavior constituted a serious need and that protecting prisoners from themselves is "an aspect of the broader constitutional duty to provide medical care..." (City Jail, Houston, Texas)

U.S. Appeals Court
MEDICAL
SCREENING

Rock v. McCoy, 763 F.2d 394 (10th Cir. 1985). City to pay \$100,000 damages to prisoner excessive force and failing to provide treatment while detained. The plaintiff was wrested by city police following a complaint by his mother-in-law who had called them because he was drunk. After following his car home, two officers grabbed his feet as he left his car, pulled him out and kicked him several times in the ribs, legs and face, and repeatedly slammed the car door against his shins. Upon admission to the city jail he received no medical treatment beyond wiping the blood from his nose. He was released the next day. A district court jury found for the plaintiff, awarding \$100,000 actual damages against the city, \$2,100 actual damages against each police officer, and \$1,000 in punitive damages against each officer. On appeal, the Tenth Circuit Court of Appeals upheld both the verdict and the awards. (Chelotah, Oklahoma Police)

1986

U.S. Appeals Court

Owens v. City of Atlanta, 780 F.2d 1564 (11th Cir. 1986). City not liable for prisoner death in police detention facility. The decedent was arrested while intoxicated by Atlanta police. He became disruptive while in custody and was placed on a wooden bench in the back of his cell. His arms were crossed in front of him and were cuffed to the bench. His ankles were locked in leg irons, stretched and attached to the cell wall (called the "stretch" hold position).

He died from asphyxiation after he fell off the bench, with his face forward. The district court found that the individual officers were not liable in this civil rights suit for merely negligent conduct, and that the city was not liable for its policy, as there was no evidence that police had previously misused the restraining device. The appeals court affirmed. (Atlanta Bureau of Police Services, Detention Unit, Georgia)

U.S. District Court
SEARCH

Smith v. Montgomery County, Md., 643 F.Supp. 435 (D.Md. 1986). An arrestee who was strip searched while temporarily detained at the county jail brought action against the county and several of its officials for certification of a retrospective damages class. The district court held that: (1) jail officials had probable cause to search temporary detainees arrested for felonies or misdemeanors involving weapons or contraband or with prior records of convictions or unresolved arrests for felonies or misdemeanors involving weapons or contraband, and (2) members of class whose fourth amendment rights were violated by jail's strip search policy were entitled to \$200 nominal damages.

Reasonable suspicion would exist to strip search all felony arrestees and all temporary detainees arrested for misdemeanor offenses that involved weapons or contraband, for purposes of determining the plaintiff class in an action against the county for conducting indiscriminate strip searches. Reasonable suspicion would also exist to strip search all temporary detainees with prior records of convictions, unresolved arrests for felony offenses, or for misdemeanors involving weapons or contraband. (Montgomery County Detention Center, Maryland)

U.S. Appeals Court
TELEPHONE

Strandberg v. City of Helena, 791 F.2d 744 (9th Cir. 1986). Failure to provide arrestee with access to telephone within first thirty minutes of detention does not violate constitutional rights. The 22-year-old decedent was arrested for traffic violations and was taken to the police station where he was confined during the booking procedure. Within approximately thirty minutes, he was found dead, hanging from the ceiling of his cell. His parents sued the city, alleging that their son's civil rights were violated because he was denied his right to free speech. They named as defendants the city, the chief of police, the police dispatcher, and all officers on duty the evening of the death.

The lower court found that the short time in which the decedent was in custody did not give rise to constitutional violations. As the decedent had not yet been charged, his right to counsel had not yet attached. Noting that courts have recognized detainees' and prisoners' first amendment rights to telephone access, but that these rights are subject to rational limitations in the face of legitimate security interests, it found that the limitations of access were reasonable, and therefore no first amendment violation resulted.

The appeals court affirmed the lower court decision. (City of Helena Police Department, Montana)

U.S. Appeals Court
SEARCH

Ward v. County of San Diego, 791 F.2d 1329 (9th Cir. 1986), cert. denied, 483 U.S. 1020. If no reasonable ground existed for a sheriff's blanket strip search policy, as applied to the plaintiff, the law in May of 1981 was sufficiently clear to subject the sheriff to liability for civil damages under Section 1983. The policy subjected the plaintiff and other minor offense arrestees to a strip search even before an own recognizance release determination was made. Prior to 1981, the court of appeals established that strip searches of arrestees for a minor offense are unconstitutional absent individualized suspicion that the arrestee is carrying or concealing contraband or is suffering from a communicable disease. (Los Colinas Womens Detention Facility, California)

U.S. Appeals Court
SEARCH

Weber v. Dell, 804 F.2d 796 (2nd Cir. 1986), cert. denied, 483 U.S. 1020. The arrestee brought a civil rights action challenging the county jail policy authorizing strip-body cavity searches of arrestees, regardless of whether they were reasonably suspected of concealing contraband. The district court, 630 F.Supp. 255, granted summary judgment in favor of county and sheriff, and the arrestee appealed. The court of appeals held that: (1) the strip-body cavity search of an arrestee who had been arrested for misdemeanor offenses was unconstitutional, where jail authorities had no reasonable suspicion that the arrestee was concealing weapons or other contraband; (2) the county could be held liable for search because the highest ranking law enforcement official in the county, the sheriff, established the policy; and (3) the sheriff was not entitled to good faith immunity defense. The county was liable for damages caused by a policy providing for strip-body cavity searches of all arrestees, where sheriff, who was highest ranking law enforcement official in county, established such policy. The sheriff who promulgated unconstitutional jail policy authorizing strip-body cavity searches of arrestees, regardless of whether they were reasonably suspected of concealing contraband, was not entitled to good-faith immunity from Section 1983 claim brought by arrestee who was subjected to strip-body cavity search, considering that three circuit court decisions holding similar policies unconstitutional antedated the search in question, and thus law was clearly established at time of search. (Rochester Police Department, New York)

1987

State Appeals Court
CLASSIFICATION

DeBow v. City of East St. Louis, 510 N.E.2d 895 (Ill. App. 1987), cert. denied, 116 Il2d 552. A detainee was injured during his confinement in a city lockup. He was arrested for illegal transportation of alcohol and he was placed in the same cell with a man arrested for aggravated assault. The plaintiff was later found unconscious on the floor of the cell with a severe head injury. Blood was found on one of the boots that were in the possession of the other occupant of the cell. The injured detainee sued the city and its police chief alleging that pre-trial detainees were inadequately supervised, that officers failed to monitor their conduct and failed to segregate violent detainees from other detainees. The inmate suffered permanent brain injury from the assault and a jury initially awarded \$3.4 million in damages. On appeal, the court upheld this award, noting that "specific intent" to deprive the detainee of his rights was not required. The state appeals court found that the plaintiff had established that the defendants had received numerous notices of noncompliance with minimum jail safety standards, including a warning that detainees were being inadequately supervised. Hourly visual checks of detainees were not being conducted and no one understood it to be their official duty to conduct such routine checks. According to the court, it is sufficient that the defendants acted recklessly by disregarding detainee safety. This disregard can be demonstrated either by both deliberate acts or by the failure to act. Since the repeated notices of noncompliance with safety standards provided notice of unsafe conditions, the appeals court agreed that the jury could conclude that the failure to act to correct the situation was reckless. (City of East St. Louis, Illinois)

State Appeals Court
PSYCHOLOGICAL
SCREENING

Gordon v. City of New York, 517 N.E.2d 1331 (N.Y. 1987). The New York Court of Appeals stated that there is a duty to provide reasonable care when prison authorities know or should know that a prisoner has suicidal tendencies or that a prisoner might physically harm himself--to assure that such harm does not occur. But the city was found not liable for lack of knowledge or proper supervision when a detainee sustained injuries caused by his plunging headfirst into a toilet bowl located in his cell. The court found that the injury that occurred was not reasonably foreseeable and that the city took "every possible precaution" against foreseeable harm. The 19-year-old detainee, who was charged with attempted grand larceny and possession of burglary tools, exhibited "boisterous, irrational and delusional behavior" at the time of his arrest, and was consequently placed alone in a bare cell without a belt or shoelaces and with a correctional officer seated directly outside his cell monitoring him. The court rejected the argument that the detainee should have been physically immobilized or restrained until he received medical attention. The behavior that the detainee exhibited, which included climbing the bars of

the cell, stating that he would like to fly, and yelling out "I am God," "Jesus Christ Superstar" was "not uncommon in holding pens and would not in itself warrant medical attention." The care taken in this case, according to the court, was reasonable and no liability was imposed given the facts that the detainee had stated his intention to feign insanity, although he appeared normal before the incident, and the officers had no knowledge of a suicidal history. (New York City, DOC)

1988

U.S. District Court
SUICIDE

Boyd v. Harper, 702 F.Supp. 578 (E.D. Va. 1988). Action was brought under a civil rights statute against custodial officials for the suicide of a pretrial detainee. On the defendants' motions for summary judgment, the district court found that in order for the suicide of a prisoner or pretrial detainee to form a basis for a civil rights cause of action against the custodial official, it is necessary to prove that the official was deliberately indifferent to the suicidal state of the prisoner or detainee. Deliberate indifference may be manifested in one of three ways: by showing that the defendant knew about the suicidal tendencies and was deliberately indifferent to the prisoner's or detainee's condition in light of such knowledge; by showing that the defendant was deliberately indifferent to discovering any potential suicidal tendency; or by showing that the defendant's conduct could be considered deliberately indifferent to the possibility of suicide even with no specific knowledge of the prisoner's or detainee's condition. No deliberate indifference on the part of custodial officials was established with respect to the suicide of the pretrial detainee, so as to provide a basis for civil rights cause of action. Even if officials had previously been informed that the inmate was weeping in his cell or of the fact that the official who had conducted the classification interview had not received proper training, such allegations showed at most merely negligent conduct on the part of the sheriff and the staff of a correctional center. The jail officials' providing the pretrial detainee with a safety razor did not provide a basis for a civil rights claim on the theory of deliberate indifference to the possibility of a suicide, where superficial injuries to the detainee's wrists inflicted with the safety razor were not the cause of his death, which resulted instead from asphyxia by hanging. (Petersburg Correctional Center, Virginia)

U.S. District Court
CLOTHING

Harper v. Kemp, 677 F.Supp. 1213 (M.D. Ga. 1988). An inmate's due process rights were not violated when his personal property was taken from him during the time he was being processed into a penal institution. No pecuniary loss was suffered by the inmate when his personal clothing that was taken from him was replaced by clothing provided by the institution. (Georgia Diagnostic and Classification Center at Jackson)

U.S. District Court
SEARCH
CLASSIFICATION

Moenius v. Stevens, 688 F.Supp. 1054 (D. Maryland, 1988). An arrestee filed suit in state and federal court, alleging that the jailor's discretionary decision to place him in a detention cell bearing a sign entitled "AIDS cell" intentionally and maliciously inflicted emotional distress. The arrestee sought compensatory and punitive damages from the mayor and city council as well as the jailor. According to the police sergeant, the idea of putting the sign on the cell was conceived because some prisoners were under the impression that they wouldn't be searched for drugs if they told turnkeys that they were infested with AIDS. By putting a sign on the cell the jail personnel were hoping that the arrested person would see it and admit that they really didn't have AIDS, and to go ahead and search them. The court held that these facts showed "at most" a "half-baked idea of unknown origin which terminated at the first inquiry by supervising officials in the police department." The federal court granted summary judgment for the mayor, city council and the jailor. State claims that arose out of the incident were allowed to proceed to trial. (Baltimore City Police Department, Maryland)

1989

U.S. District Court
MEDICAL
SCREENING

Carapellucci v. Town of Winchester, 707 F.Supp. 611 (D. Mass. 1989). The administratrix of a deceased pretrial arrestee's estate brought a civil rights action and state law claim against police officers and the town for violation of the eighth amendment right to medical treatment. On the motion for summary judgment, the federal district court found that in light of the similarity between the symptoms of drug ingestion and alcohol intoxication, the police officers and the town were not grossly negligent in failing to arrange for the medical treatment of the arrestee. Both the expert and the lay testimony were insufficient to raise a genuine issue of material fact. The court also found that the booking procedures recommended by the American Correctional Association were insufficient to determine what standard was applicable to the town jail. It was determined that the officers had qualified immunity, and under Massachusetts law, the police officers and the policy chief had immunity.

The police officers' failure to supervise a pretrial arrestee was not an adequate basis for a finding of gross negligence or worse after the arrestee died in his cell from a prearrest drug ingestion, sufficient to impose liability on them, where the officers were unaware of a serious medical need. The symptoms of the arrestee were barely distinguishable from alcohol intoxication. The police officers' failure to give a blood test or a medical examination to a drunk driving arrestee was not grossly negligent or sufficient to impose liability following the arrestee's death.

The evidence that was found was inadequate to show that the town was grossly negligent for failing to have a policy or facilities to allow for the treatment of the drunk driving arrestee who died in custody as a result of the previous ingestion of alcohol, glutethimide and large quantities of codeine; the lack of evidence that any agency used the expert's recommended procedures, or that any government unit had adopted the expert's suggested guidelines rendered the opinion insufficient.

The difference of seven minutes from the recommended schedule for checking on an intoxicated pretrial arrestee would not support the finding of negligence, nonetheless gross negligence, after the arrestee died in his cell as the result of a prearrest drug ingestion. The jail's failure to have booking forms inquiring whether the arrestee had consumed medication or drugs was not evidence of gross negligence of a minimally accepted standard booking practice for holding jail facilities, notwithstanding the recommendation for the use of such forms by the American Correctional Association. (Winchester Police Department, Massachusetts)

U.S. Appeals Court
PSYCHOLOGICAL
SCREENING

Danese v. Asman, 875 F.2d 1239 (6th Cir. 1989), cert. denied, 110 S.Ct. 1473. A pretrial detainee's family and estate brought a civil rights action against police officers, police supervisors, and the city after the detainee committed suicide. The U.S. District Court found that the defendants were not entitled to qualified immunity. Interlocutory appeal was taken. The appeals court reversed the lower court's decision and found that the police officers and supervisors enjoyed qualified immunity from liability. The law which existed at the time of the police officers' action did not clearly establish the right to have the officers diagnose the pretrial detainee's condition as prone to suicide and to take extraordinary measures to restrain the pretrial detainee; therefore, the police officers had qualified immunity from liability. The police officers were not subject to a clearly established constitutional duty to diagnose the pretrial detainee's condition as prone to suicide; and given that, the supervisors could not be held liable. (Roseville City Jail, Michigan)

U.S. Appeals Court
SUICIDE

Dorman v. District of Columbia, 888 F.2d 159 (D.C. Cir. 1989). The representatives of a detainee's estate brought a Section 1983 action against a municipality to recover for the suicide of the detainee in a cell. The U.S. District Court denied the municipality's motion for judgment notwithstanding a verdict and the municipality appealed. The court of appeals, reversing and remanding the lower court's decision, found that the municipality was not liable. According to the court, the training of police officers on suicide prevention did not rise to the level of a conscious choice by the municipality or the policy of deliberate indifference to the eighth amendment rights of the detainee who committed suicide in his cell and, therefore, did not permit the imposition of a Section 1983 liability upon the municipality, even though the police officers did not receive a specific course on suicide prevention. The officers were trained to recognize abnormal behavior, could not accept arrestees who showed signs of mental illness or abnormal behavior, and utilized "WALES" computer system with information about previous arrests and suicide attempts. The detainee's suicide was the first in the cell block in the memories of the sergeant and the inspector who had been assigned there for eight years. The alleged deficiencies in the training of police officers on suicide prevention did not cause the suicide of the young male detainee in his cell. The mere fact that the detainee was somewhat docile at the time of the arrest and closed his eyes at the police station during hulls in the processing was insufficient to give the officers notice that he might be suicidal. The court found that the case presented was insufficient to be submitted to a jury and the verdict for the plaintiff was therefore reversed. (Fifth District, Metropolitan Police Department, District of Columbia)

U.S. District Court
MEDICAL
SCREENING

Marricone v. U.S., 703 F.Supp. 384 (E.D. Pa. 1989). Action was brought against the United States on behalf of an inmate who died of a heart attack while incarcerated in a federal prison. The district court found that under Kentucky law, the physician's assistant who interviewed the inmate as part of the medical intake screening procedure, and the corrections officer who assigned the inmate to an upper bunk on the third floor of the housing unit were not negligent in failing to diagnose the inmate's cardiac condition or take steps to provide medical care before the inmate complained of chest pains and difficulty in breathing. At the time of the intake interview there was no physical manifestation nor any complaint voiced by the inmate of cardiac symptomatology, and the only reason for the recommended assignment of the inmate to the first floor with a lower bunk was the inmate's compromised ability to ambulate due to the amputation of toes. (Federal Correctional Institute, Lexington, Kentucky)

U.S. District Court
MEDICAL
SCREENING

Rellergert v. Cape Girardeau County, Mo., 724 F.Supp. 662 (E.D. Mo. 1989). A civil rights action was brought against a sheriff and jailor following the suicide of an inmate. Following a judgment in favor of the plaintiffs, the defendants moved for a judgment notwithstanding the verdict. The district court granted the motion, and found that the sheriff and jailor were entitled to qualified immunity with respect to the civil rights action arising out of the suicide of the inmate, even though he stated on his medical history sheet that he had attempted suicide. They placed him in a common area where he could be kept under observation, where his normal conduct was unchanged since his prior incarceration a month earlier, and where he was observed going to the bathroom shortly before he hung himself. He had no sheet or bedding with him and it was unclear where the sheet with which he hung himself had been acquired. The court found that the defendants had taken reasonable steps to protect this inmate against suicide--in fact "they did everything they could" to protect the inmate from himself. "There were no facts to suggest the defendants had an evil intent or motive to allow" the inmate to harm himself "nor were the defendants callously indifferent to his needs. Rather, they took affirmative action to monitor him almost constantly." The mere fact that monitoring equipment had not also been installed in the bathroom did not constitute deliberate indifference. (Cape Girardeau Jail, Missouri)

U.S. Appeals Court
SUICIDE

Williams v. Borough of West Chester, Pa., 891 F.2d 458 (3rd Cir. 1989). The estate of an arrestee who committed suicide by hanging after jailing officers failed to remove his belt sued officers and the city police department under the federal civil rights statute. The U.S. District Court entered a judgment for the officers and municipality and the estate appealed. The appeals court, affirming the decision, found that the officers placing the arrestee in a cell lacked the knowledge of his suicidal tendencies. The dispatcher was not responsible for the suicide, as he had no prisoner care responsibilities; and the municipality was not liable, as none of the individual officers were liable. A man and his twin brother were arrested in a store--one of them for suspected shoplifting and the other for allegedly threatening people in the store and re-entering the store after being told not to do so. Officers at the station placed each man in a separate cell. They failed to remove the belt of the man with suicidal tendencies. Of the three officers present, one then went off duty, one went out for dinner, and a dispatcher stayed at his station answering the radio and the phone. While the dispatcher heard noises coming from the cell area, he did not check the cell block. When the other officer returned from dinner, he discovered that the detainee had hung himself with his belt. (West Chester Police Department, Pennsylvania)

1990

U.S. Appeals Court
SUICIDE
MEDICAL
SCREENING

Belcher v. Oliver, 898 F.2d 32 (4th Cir. 1990). A civil rights action was brought against the city, mayor, chief of police, and police officers, by the daughter of a pretrial detainee who committed suicide with a belt while detained at the city jail on charges of public intoxication and hazardous driving. Reversing and remanding the lower court decision, the U.S. Circuit Court of Appeals found that the general right of pretrial detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies. The officers' failure to afford medical screening or attention to the detainee did not violate constitutional standards. There was an absence of evidence that indicated to the officers that the detainee posed a risk of suicide. It was also established that the failure of the police officers to remove the detainee's belt and shoelaces did not reach a level of "deliberate indifference," and therefore the officers were entitled to qualified immunity. (Clendenin City Jail, West Virginia)

U.S. Appeals Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Burns v. City of Galveston, Tex., 905 F.2d 100 (5th Cir. 1990). The mother of a detainee who committed suicide while in jail sued the city under Section 1983. The U.S. District Court entered a judgment for the city and the mother appealed. The court of appeals found that the alleged noncompliance by police department officials with a city policy requiring that detainees in jail be checked visually at hourly intervals did not form a basis for a Section 1983 action following the suicide of a detainee where the suicide occurred within one hour of confinement and would not have been prevented by compliance with the requirement. It was also found by the Court that the city was not required to provide psychological screening which might have detected suicidal tendencies of the detainee. The civil rights of the detainee were not violated by the city's failure to train officers in psychological screening procedures and to utilize a sample medical psychological screening questionnaire found in the detainee treatment manual. The detainee did not have an absolute right to psychological screening. (Galveston City Jail, Texas)

U.S. District Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Elliott v. Cheshire County, N.H., 750 F.Supp. 1146 (D. N.H. 1990). The father of a pretrial detainee who committed suicide in his cell brought a civil rights action against the county and jail officials. On defendants' motions for summary judgment, the district court found that the jail officials did not act with deliberate indifference to the pretrial detainee's serious medical needs when they failed to diagnose his mental condition as potentially suicidal or prevent his suicide, entitling them to qualified immunity; there was no evidence that the officials were given actual notice of the detainee's need for special care or for protection or that their failure to act placed the detainee in any serious danger. The arresting officer who knew that the pretrial detainee had a history of mental illness did not act with deliberate indifference to the detainee's medical needs when he failed to recommend immediate treatment to prevent suicide, entitling him to qualified immunity; the officer did not know that the detainee had suicidal tendencies, and had never witnessed any violent behavior by him. It was also found that the county's alleged inadequate training of jail officials in dealing with suicide risk inmates did not amount to deliberate indifference to the rights of the inmates, precluding the county from being held liable. Although there had been other suicides and attempted suicides in the jail in the previous ten years, the county had implemented suicide prevention procedures and there was no evidence that better training in suicide prevention would have alerted the jail officials that the detainee was a suicide risk. (Cheshire County House of Corrections, New Hampshire)

U.S. District Court
SUICIDE

Hamlin v. Kennebec County Sheriff's Dept., 728 F.Supp. 804 (D.Me. 1990). A pretrial detainee who had attempted suicide at the county jail brought a pro se civil rights suit against the county sheriff and others. On defense motions to amend and for summary judgment, the district court found that the officers who were on duty at the county jail on the night of the pretrial detainee's suicide attempt were necessary parties for adjudication of the civil rights suit, and thus would be joined as defendants and added as moving parties on the defense motion for summary judgment. The alleged conduct of the county sheriff and the officers on duty at the county jail on the night of the pretrial detainee's suicide attempt in allowing the detainee to keep the laces of his boots, which the detainee used in an attempt to hang himself, was at most negligent and did not rise to a level of constitutional violation, even though the jail policy required the removal of the laces and the detainee was arrested for driving while intoxicated. The guard at the jail asked the detainee to remove the boot laces, the laces were difficult to remove and the guard said they would have to be cut. The detainee objected on the grounds of cost, and another guard said that they should admit the detainee with the boot laces because he had been there before and would not "try anything." The plaintiff alleged that he suffered severe physical and emotional distress as a result of his suicide attempt at the Kennebec county jail.

The court stated, "It is plain that the defendants decided to deviate from their standard procedure in processing jail admittees only after the plaintiff himself had expressed concern for the cost to him of replacing the boot laces and another guard had offered her opinion that based on her knowledge of the plaintiff he did not represent a suicide threat. The plaintiff had not alleged that he manifested any suicidal tendencies, and clearly at the time of the incident the plaintiff was rational enough to express concern over the price of the laces. If it represents any breach of the standard of care owed pretrial detainees, the defendants' conduct, based on an informed opinion of the plaintiff's state of mind by one of their colleagues, is negligence, and it does not rise to the level of a constitutional violation". (Kennebec County Jail, Maine)

U.S. District Court
MEDICAL
SCREENING
SUICIDE

Simmons v. City of Philadelphia, 728 F.Supp. 352 (E.D. Pa. 1990). A civil rights and negligence action was brought against the city and attending officer by the estate of an intoxicated detainee who committed suicide. On the defendants' motions for posttrial relief, following the jury verdict in favor of the estate, the district court denied the relief, finding that the evidence was sufficient to support a finding that the city violated the detainee's civil rights; the jury verdict was not inconsistent. The city waived its governmental immunity. It was also found that a postsuicide photograph of the detainee was admissible. The finding that the city was deliberately indifferent to serious medical needs of an intoxicated detainee, and thus liable under Section 1983 when the detainee committed suicide, was sufficiently supported by evidence that the detainee was at a high risk to commit suicide, that his suicide was foreseeable and preventable, that the attending officer had no training in suicide prevention, and that the police department had been informed of alternative arrangements it could have made which would have reduced the risk of the detainee's suicide. (City's Sixth Police District, Pennsylvania)

U.S. Appeals Court
REFUSAL TO
ADMIT

U.S. v. District of Columbia, 897 F.2d 1152 (D.C. Cir. 1990). The United States instituted an action for the permanent injunctive relief and declaratory judgment against the District of Columbia and others, seeking to enjoin the District from refusing to accept prisoners who had been sentenced by the Superior Court of the District of Columbia. The district court found that the district was required to accept all newly

sentenced prisoners unless the acceptance would exceed a facility's court-ordered population limit and required the district to immediately undertake all feasible measures to provide space for adult male prisoners sentenced by the superior court; the district appealed. The appeals court, affirming as modified, found that the district could refuse to accept newly sentenced prisoners only if accepting those prisoners would violate the constitution or judicial orders setting prison population limits, but requiring the district to demonstrate it had undertaken all feasible measures to provide space for adult male prisoners before receiving judicial authorization to refuse the admission of additional inmates exceeded the scope of an appropriate remedy. (District of Columbia)

U.S. District Court
SUICIDE

Zwalesky v. Manistee County, 749 F.Supp. 815 (W.D. Mich. 1990). A widow of an intoxicated prisoner who committed suicide while a detainee, brought a Section 1983 action against jailers, the county, and the sheriffs department. The U.S. District Court found that the jailers were entitled to qualified immunity with respect to the "medical needs" claims brought by the widow. A general constitutional right to medical care did not establish a clear constitutional right to be appropriately screened by prison officials for suicidal tendencies and psychological problems. In addition, the jailers did not deprive the prisoner of a clearly established right by failing to prevent his suicide while detained in an allegedly inadequate detoxification room, and, thus, the jailers' supervisors could not held liable for improper training. (Manistee County Jail, Michigan)

1991

U.S. District Court
SUICIDE

Christian By and Through Jett v. Stanczak, 769 F.Supp. 317 (E.D. Mo. 1991). Survivors of a prisoner who committed suicide in a holdover cell brought a Section 1983 action against the arresting officer and a police dispatcher. The defendants moved for summary judgment. The U.S. District Court found that the officer's failure to designate the arrestee as a suicide risk did not subject the officer to liability in the Section 1983 action, even though the arrestee committed the suicide while he was incarcerated in a holdover cell. The warnings concerning the arrestee's reference to suicide, his state of intoxication, and his abusive behavior were insufficient to apprise the officer of the arrestee's suicidal tendencies. It was also found that the police dispatcher was not liable under Section 1983 for the suicide of the prisoner; while the dispatcher's failure to turn on the camera in the holdover cell at the beginning of her shift may have constituted negligence on her part, it did not rise to the level of deliberate indifference. (City of Florissant Police Department, Missouri)

U.S. District Court
SUICIDE

Kocienski v. City of Bayonne, 757 F.Supp. 457 (D. N.J. 1991). An administratrix of a pretrial detainee's estate brought a civil rights action against a city and city police officers based on the detainee's suicide death. On the officer's motion for summary judgment, the U.S. District Court found that even if the police officer was aware of the detainee's suicidal tendencies, the officer's failure to communicate those tendencies to other officers did not constitute deliberate indifference to the detainee's needs in violation of due process; any failure by the officer to communicate suicidal tendencies to other officers constituted negligence only. The police officers' failure to assure that the detainee's pantyhose were removed after becoming aware that she was wearing pantyhose did not constitute deliberate indifference to the detainee's psychological needs because no evidence indicated that the officers had knowledge of the detainee's suicidal tendencies. After it was determined that police officers were not deliberately indifferent to the pretrial detainee's needs when they failed to prevent her suicide, the city could not be held separately liable for failing to train its police officers. (Bayonne Municipal Jail, New Jersey)

U.S. District Court
RULES

Perry v. Davies, 757 F.Supp. 1223 (D. Kan. 1991). An inmate brought a civil rights action challenging prison regulations requiring that mandatory identification photographs of all entering inmates not include facial hair. The U.S. District Court dismissed the complaint, finding that the regulations did not violate the inmate's right to religious freedom. Even assuming the plaintiff accurately stated that his religion requires him to have facial hair, and that he is an active practitioner of this religion, the court found the restriction of the plaintiff's constitutional right permissible because the prison regulation was rationally related to a legitimate security interest in having clean shaven identification photographs, and the intrusion was minimal, as the plaintiff would be allowed to regrow the facial hair once the photographs were obtained. (Lansing Correctional Facility, Lansing, Kansas)

U.S. Appeals Court
SUICIDE

Simmons v. City of Philadelphia, 947 F.2d 1042 (3rd Cir. 1991). A mother and administratrix of the estate of a detainee who hung himself in a Philadelphia station house lockup after having been arrested for intoxication brought an action seeking damages under Section 1983 and under state law. On the defendants' motions for post trial relief, following a jury verdict in favor of the plaintiff, the United States District court denied relief and the city and turnkey appealed. The court of appeals found that evidence made a question for the jury whether the city violated the detainee's rights by means of custom or policy tainted by deliberate indifference to serious medical needs of intoxicated

detainees and as to whether the city violated the detainee's rights through deliberately indifferent failure to train officers responsible for intoxicated detainees in suicide detection and prevention, and was sufficient to support a conclusion that indifference to the needs of detainees and failure to train was the cause of violation of the detainee's Fourteenth Amendment rights. In addition, it was found that the Pennsylvania political subdivision Tort Claims Act did not nullify a city ordinance waiving immunity from liability arising from the negligence of city police officers. (Sixth Police District, Philadelphia, Pennsylvania)

1992

U.S. District Court
MEDICAL
SCREENING

Aaron v. Finkbinder, 793 F.Supp. 734 (E.D. Mich. 1992). An insulin-dependent diabetic prisoner filed a lawsuit against a sheriff's deputy and jail clinic nurses, alleging violation of a federal civil rights statute and the Eighth Amendment. The defendants moved for summary judgment. The district court, granting the motion, found that the deputy sheriff who booked the prisoner was not deliberately indifferent to his medical needs. According to the court, even if he failed to show on a medical screening chart that the prisoner needed to be furnished with insulin, he called and informed the clinic of that fact. Furthermore, the nurses' actions and inactions cited by the prisoner also did not indicate deliberate indifference to his medical needs. One nurse testified that she received a sick-call slip one day after it was filled out by the inmate, at which time she scheduled him for sick call. She also took the inmate's vital signs approximately three hours after receiving the sick-call slip. These actions were reasonably prompt and do not rise to the level of deliberate indifference, the court ruled. The inmate asserts that a second nurse displayed deliberate indifference by misreading or improperly administering the random blood sugar tests and by not taking appropriate precautionary steps when the inmate's nausea and headaches were noted. The fact that the nurse took action to relieve the plaintiff's condition shows she was not indifferent to his needs. Finally, the plaintiff sued a third nurse claiming deliberate indifference to his needs when she gave the inmate fifty units of insulin rather than fifty-eight units. A discrepancy of eight units is not grounds for an Eighth Amendment or Section 1983 claim of deliberate indifference. The fact the inmate was provided with insulin shows a lack of indifference. (Oakland County Jail, Michigan)

U.S. District Court
MEDICAL
SCREENING

Myers v. Maryland Div. of Correction, 782 F.Supp. 1095 (D. Md. 1992). Inmates brought an action against the Maryland Division of Correction, regarding a threat of infection with the Human Immunodeficiency Virus (HIV) and of spread of Acquired Immune Deficiency Syndrome (AIDS) in prison. On motions for summary judgment, the U.S. District Court found that the policies and programs adopted by Maryland Division of Correction to combat the spread of HIV and AIDS did not violate the right of HIV negative inmates to be free from cruel and unusual punishment to the extent that they did not require mandatory testing of all inmates and did not consider an inmate's HIV status in making housing and work assignments; although pervasive risk of harm was present, there was no showing of deliberate indifference. (Maryland Division of Correction)

1993

U.S. District Court
SUICIDE

Bragado v. City of Zion/Police Dept., 839 F.Supp. 551 (N.D.Ill. 1993). A suit was brought under the Section 1983 civil rights statute, the Illinois Survival Act, and the Illinois Wrongful Death Act seeking damages for the city's failure to personally inspect and prevent the suicide of a jail prisoner. After the jury returned a verdict in favor of the plaintiff, posttrial motions were made in which the plaintiff sought funeral expenses and the defendant sought judgment notwithstanding the verdict. The district court found that evidence supported a finding that jail officials acted with deliberate indifference to the prisoner's rights. Inadequate personal inspections of the prisoner were done despite the knowledge of the prisoner's suicidal tendencies. Audio and video monitoring were also insufficient. In addition, the on-duty officer knew of the prisoner's threat of suicide, as well as her intoxication and injuries to her wrists. The court also found that the jury's verdict awarding damages for the city's wrongful failure to prevent the prisoner's suicide, in the amount of \$5,000 under the Illinois Survival Act and approximately \$232,000 under the Illinois Wrongful Death Act as well as nominal damages for Section 1983 civil rights violation, was supported by evidence and was reasonable. (City of Zion Police Station, Zion, Illinois)

U.S. District Court
SCREENING
SUICIDE

Herman v. Clearfield County, PA, 836 F.Supp. 1178 (W.D. Pa. 1993). The estate of a pretrial detainee who committed suicide while detained brought a Section 1983 civil rights claim alleging that jail officials failed to identify and treat the decedent's obvious suicidal intent and that the county consciously followed a policy or custom of failing to train jail employees. The county and its officials moved for summary judgment. The district court found that the jail officials were adequately trained in suicide prevention. Claims of inadequate training are not enough to establish liability. The plaintiff must identify specific training that the municipality did not give, explain how lack of that training

actually caused the ultimate injury, and show that alleged failure to train was part of official municipal policy of deliberate indifference. The plaintiff must present evidence that the alleged indifference was a conscious choice that resulted either from a decision officially adopted and promulgated or from a permanent and well settled practice. The county's alleged failure to train jail personnel to recognize and respond to the suicidal tendencies of pretrial detainees did not support the Section 1983 civil rights claim by the detainee's estate. The jail did not have a history of numerous suicides and suicide attempts. In addition, the county employed a suicide prevention program for screening detainees. Also, the jail correction officials did receive training regarding detention of suicidal detainees and appropriate responses. (Clearfield County Prison, Pennsylvania)

U.S. District Court
SEARCH

Kidd v. Gowen, 829 F.Supp. 16 (D.N.H. 1993). An action was brought against a county concerning the strip search of an intoxicated protective custody detainee. The district court found that the facility's policy of strip-searching intoxicated protective custody detainees violated the Fourth Amendment because it permitted such searches without any individualized suspicion that a particular detainee might be secreting weapons or other contraband. The county offered no evidence showing that such detainees were more likely to secrete weapons or other contraband or that the threat of self-harm by such detainees was greater. (Strafford County House of Correction, New Hampshire)

U.S. District Court
SEARCH
TELEPHONE

Newkirk v. Sheers, 834 F.Supp. 772 (E.D. Pa. 1993). Pretrial detainees brought a suit against a local government and prison officials in their official and individual capacities alleging violation of the detainees' constitutional rights. On cross motions for summary judgment, the district court found that the double celling of the detainees in other than exigent circumstances violated their due process rights. In addition, blanket strip and body cavity searches of the pretrial detainees violated their Fourth Amendment rights, and the restricted use of telephones during the prison's required initial 48-hour lockdown period did not violate constitutional rights. (Schuylkill County Prison, Pennsylvania)

1994

U.S. Appeals Court
SCREENING
SUICIDE

Estate of Hocker By Hocker v. Walsh, 22 F.3d 995 (10th Cir. 1994). In a prison suicide case the U.S. District Court granted summary judgment for a county and sheriff. The administrator of the estate of the deceased detainee appealed. The appeals court, affirming the decision, found that the county and sheriff were not deliberately indifferent to the detainee's serious medical needs by establishing a policy of admitting unconscious, intoxicated arrestees; rather, the record showed that the prisoner was neither admitted to the jail in an unconscious state nor observed to be unconscious after being admitted. The jail staff had no reason to suspect that the detainee, who was intoxicated or under the influence of drugs, posed a risk of suicide, as required to support a claim that the county and sheriff were deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Norman, Oklahoma)

U.S. Appeals Court
SUICIDE

Hare v. City of Corinth, MS, 22 F.3d 612 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a civil rights action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and the officials appealed. The appeals court noted that, at the time the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to respond to the detainee's serious medical needs, including suicidal tendencies and attempts to commit suicide, with at least more than deliberate indifference. The pretrial detainee committed suicide in her cell by hanging herself with a blanket she had torn into strips. The court found genuine issues of material fact as to whether jail officials knew or should have known of the detainee's vulnerability to suicide. She was placed in an isolated cell which was not visually monitored and which could not be reached by a trustee or the dispatcher on duty. The court precluded summary judgment in favor of the officials on qualified immunity grounds. (Corinth City Jail, Mississippi)

U.S. Appeals Court
CLASSIFICATION

Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994) U.S. cert. denied 115 S.Ct. 199. A juvenile detainee, by his limited conservator, brought Section 1983 and negligence claims seeking damages for injuries sustained in an attempted suicide. The appeals court, affirming in part and reversing in part, found that any violation of the Juvenile Justice Act in temporarily lodging the juvenile in an adult jail was not the proximate cause of his attempted suicide because the juvenile was scrupulously shielded from deleterious influences associated with adult facilities. The court also found that the prison officials' failure to take special precautions to protect the juvenile detainee from suicide was not deliberate indifference to his serious medical needs, as required to establish a Fourteenth Amendment violation. Juvenile detainees were not, as a class, particularly vulnerable to suicide and entitled to special screening for suicidal tendencies. (Madison County Detention Center, Kentucky)

U.S. District Court
SCREENING
MEDICATION

Messina v. Mazzeo, 854 F.Supp. 116 (E.D.N.Y. 1994). An arrestee brought a federal civil rights action against a correctional officer. The district court found that the allegation that the correctional facility intake officer refused to mark the arrestee as Jewish on an intake sheet and provide him with a proper identification card did not state a claim for a

constitutional violation as there was no allegation that the arrestee requested kosher food and was denied that right. The district court found that the pretrial detainee stated a claim for deliberate indifference to his medical needs by alleging that the intake physician at the correctional facility denied him methadone which was allegedly warranted upon the detainee's arrival. If, based on the detainee's condition, it was medically necessary that he receive the methadone immediately, the physician's action was more than negligent. (Rikers Island, New York)

U.S. Appeals Court
SCREENING
SUICIDE

Titte v. Jefferson County Com'n., 10 F.3d 1535 (11th Cir. 1994). In an action arising out of two prisoner suicides, the U.S. District Court granted the defendants' motion for summary judgment, and the plaintiffs appealed. The appeals court found that the county did not act with deliberate indifference to the prisoners' suicide risk, as required to establish a violation of the Eighth or Fourteenth Amendment in the prisoners' suicide. The prisoners were screened by jail medical personnel and neither exhibited suicidal tendencies. Alleged weaknesses in the screening of inmates for suicidal tendencies, without more, did not amount to a showing of deliberate indifference toward the prisoners' rights. (Jefferson County Jail, Alabama)

1995

U.S. District Court
CLASSIFICATION
SCREENING

Clarkson v. Coughlin, 898 F.Supp. 1019 (S.D.N.Y. 1995). Male and female deaf and hearing-impaired inmates sued correctional officials alleging failure to accommodate their hearing impairments in violation of the Rehabilitation Act, the Americans with Disabilities Act (ADA), due process, and the Eighth Amendment. The inmates also alleged violation of equal protection because male inmates were granted access to a sensorially disabled unit, but not females. The district court found that the defendants violated all statutes and constitutional provisions under which the inmates had sought relief, warranting declaratory and injunctive relief. The court found that deaf and hearing-impaired inmates had a parole-related liberty interest at stake entitled them to the presence of a qualified interpreter at hearings and other proceedings. The court found that the defendants violated the Rehabilitation Act and ADA by failing to establish an effective procedure for deaf and hearing impaired inmates regarding accommodations and assistive services, and by failing to provide qualified interpreters for various aspects of the reception and classification process. The court found that the defendants violated the Rehabilitation Act and ADA by failing to provide them with timely access to telephone communication devices, close caption decoders for televisions, and special alarms to alert them in the event of a fire. According to the court, medical treatment provided to deaf and hearing-impaired inmates without the assistance of a qualified interpreter or other assistive devices was a failure to provide sufficient information for informed consent, thereby violating inmates' due process rights to be free from unwanted medical treatment. At least two inmates experienced improper and possibly harmful treatment as a result. The use of sign language interpreters who were not bound to maintain confidentiality in the administration of medical treatment violated the inmates' constitutional right to privacy. The court held that even if all of the needs of deaf and hearing-impaired inmates were met at a sensorially disabled unit at one prison, the defendants violated their rights under the Rehabilitation Act and ADA by transferring them to other facilities for disciplinary, safety and/or medical reasons. Also, the court found that the fact that there were more male deaf and hearing-impaired inmates requiring services than female did not justify the fact that many male inmates--but no female inmates--had access to a prison's sensorially disabled unit. (New York Department of Correctional Services)

U.S. District Court
SEARCHES

Nowosad v. English, 903 F.Supp. 377 (E.D.N.Y. 1995). A plaintiff brought a § 1983 action against county officials and individuals involved with his arrest and prosecution. The district court found that the plaintiff stated an excessive force claim, where he alleged that during the course of his arrest he was pushed, his arm was painfully and roughly twisted, and he suffered such difficulties as a disabling knee injury, arm, shoulder, back and leg injuries causing pain. The court found that a strip search did not violate the Fourth Amendment, where the fact that the plaintiff was charged with menacing with a weapon provided an element of reasonable suspicion that another weapon was concealed. (Suffolk County Police Department, New York)

U.S. District Court
CLASSIFICATION
MEDICAL
SCREENING

Treadwell v. Murray, 878 F.Supp. 49 (E.D. Va. 1995). A state inmate brought a Section 1983 action against supervisory prison personnel and an unknown physician. On a motion to dismiss, the district court found that the state inmate's broad allegations that supervisory prison personnel deprived him of a safe and rehabilitative environment by failing to oversee employees failed to state a Section 1983 claim based on supervisory liability where the inmate's claim focused on the single event of an unknown physician's alleged inappropriate initial medical classification of the inmate. In addition, neither the due process clause nor state statutes or regulations conferred upon the inmate a protected liberty interest in a particular classification. (Field Unit #30, Virginia)

U.S. District Court
SUICIDE
MEDICAL SCREENING

Vine v. County of Ingham, 884 F.Supp. 1153 (W.D.Mich. 1995). The personal representative for the estate of a detainee who died while in police custody sued a county, a city and various city and county staff and officials. The decedant was arrested for two outstanding city arrest warrants after a deputy was called to a home on a disorderly person complaint. The decedant told the deputy he had ingested methyl alcohol, refused to cooperate with the deputy's attempts

to determine his physical condition and apparently refused to accept ambulance transportation to the hospital. The deputy transported the decedant to the city where a police officer assumed custody and transported the decedant to the city lock-up without a medical examination. At booking the decedant appeared to be intoxicated but no special precautions were taken; he was placed in handcuffs in a maximum security plexiglass-lined observation cell because he was belligerent and was believed to have previously attempted suicide. The decedant fell asleep (or passed out) on the floor and remained motionless for several hours; he was visually checked periodically by officers who observed no change in his condition. Nearly six hours after being placed in the cell officers observed mucous or vomit coming from the decedant's nose or mouth and when they rolled him over to remove the handcuffs his head jerked and struck the wall or floor causing a laceration above his eyebrow; he did not awaken. No medical attention was obtained for another two hours when he was transported to the hospital in a comatose condition, where he died shortly after arrival. The district court held that the sheriff and county were not liable under § 1983 for inadequate training nor were they liable for gross negligence based on allegedly inadequate training. The court also held that the sheriff and county were immune from liability for gross negligence, and that the city, police department and police chief were not deliberately indifferent to the need for better training. The court noted that such claims would apply only if the conduct represents usual or recurring situations with which the officers must deal. Deputies had completed training approved by the state law enforcement training council and had received substantial in-service training. According to the court, the fact that they were arguably negligent when they took the decedant into custody without first ascertaining his medical condition was not enough, in itself, to create a question of fact regarding the adequacy of their training. The lack of a county policy regarding treatment of persons who had ingested methyl alcohol was not significant absent evidence that methyl alcohol ingestion was a recurring problem of which staff were aware. The court ruled that the action of one detention officer indicated only negligence, which was not sufficient to sustain liability under § 1983. The court ruled, however, that genuine issues of material fact precluded summary judgment for some, but not all, of the city police officers who failed to take any action in response to their observation that a blow to the head failed to rouse the intoxicated detainee. (Lansing Police Lock-Up, Michigan)

1996

U.S. District Court
CLOTHING
MEDICATION

Gerakaris v. Champagne, 913 F.Supp. 646 (D.Mass. 1996). A plaintiff who was detained at a local police station and transferred to a county jail sued officials and law enforcement officers alleging he was threatened and intimidated in an attempt to prevent him from testifying against a public official, his father-in-law, in a grand jury investigation of professional misconduct. The district court held that the plaintiff stated a § 1983 claim based on alleged denial of free speech, deprivation of medical care, delayed booking, and conspiracy. Following an alleged concerted period of intimidation seeking to dissuade him from cooperating with the investigation of his father-in-law, the plaintiff was arrested at his mother's home for allegedly violating a restraining order. The plaintiff informed the arresting officers that he suffered from several illnesses, for which he was taking prescriptions. The officers refused to permit the plaintiff to retrieve his medications before transporting him to the police station. During his booking at the police station, the plaintiff complained again about his medical and dietary needs. Law enforcement officers deliberately delayed the plaintiff's booking until after the local court had closed, denying him an immediate appearance before a judge. Unable to make bail, the plaintiff was transported to the county jail later that evening, remaining there for two nights. The plaintiff alleged that jail staff and officials abused him during his confinement by refusing to allow him to wear warm clothing, placing him in solitary confinement, misleading visitors about his location and thereby denying his visitation rights, denying him prescription medication, and providing him with inadequate food during his 40-hour confinement. The court noted that although the plaintiff's period of confinement was short, it must be measured against the intolerability of the conditions endured and the egregiousness of the defendants' conduct. (Peabody Police Station/Middleton House of Correction, Massachusetts)

U.S. Appeals Court
CLASSIFICATION
SCREENING

Jensen v. Clarke, 94 F.3d 1191 (8th Cir. 1996). State prison inmates brought a § 1983 action against prison officials alleging that randomly assigning new inmates to double cells substantially increased the risk of violence by cellmates. On remand from an appeal of a remedial plan, the district court ruled that prison officials had actual knowledge of and disregarded a substantial risk of safety to inmates posed by random cell assignments. The appeals court affirmed, finding that the practice was cruel and unusual punishment and noting that this suit was a failure-to-protect case focusing on the manner of assigning new inmates to cells, rather than a prison crowding case. The court found that cruel and unusual punishment was established by evidence that demonstrated the increased number of inmates found guilty of violent offenses, the number of inmates requesting protective custody, and anecdotal evidence of violence from prisoners. The appeals court held that prison officials were entitled to qualified immunity in their individual capacities in light of the diversity of precedent on the need for classifying cellmates. The appeals court found that a district court injunction which required prison officials to use available classification information to determine cellmate compatibility was a proper remedy, after officials chose to take a premature appeal rather than remedy the constitutional violation. The appeals court held that the Eleventh Amendment did not bar the

award of attorney fees as an ancillary to prospective relief and that limits on fee awards under the Prison Litigation Reform Act (PLRA) did not apply retroactively. The court found that reductions used to make a lodestar award of attorney fees were not abuses of discretion. The court had used a 10% reduction of the number of hours sought by the attorneys, while the state had requested a 50% reduction. The court had also made a 15% reduction of attorney fees for partial success despite the state's request for a 75% reduction, noting that the inmates had prevailed on the primary claim that the prison was unsafe. (Nebraska State Penitentiary)

U.S. Appeals Court
SEARCHES

Kelly v. Foti, 77 F.3d 819 (5th Cir. 1996). An arrestee filed a § 1983 action against police and jail officials asserting constitutional and tort claims. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court affirmed in part, dismissed in part, and remanded the case. The appeals court held that the conduct of the arrestee in making an illegal left turn and failing to present a driver's license did not create reasonable suspicion that she was hiding weapons or contraband so as to justify a strip search for the purposes of a police officer's claim of qualified immunity. The court found that the strip search was not objectively reasonable under the law at the time of the search, absent individualized suspicion. The court ruled that jail officials may strip search a person arrested for a minor offense and detained pending posting of bond only if they possess reasonable suspicion based on such factors as the nature of the offense, the arrestee's appearance and conduct, or a prior arrest record. The court noted that although the arrestee lacked photograph identification and failed to post bond within five hours, she readily identified herself, explained that she had left her driver's license in her hotel room, cooperated with police, and presented a purse full of other nonphoto identification. (City of New Orleans and Sheriff)

U.S. District Court
HYGIENE ITEMS
CLOTHING

Roe v. County Com'n of Monongalia County, 926 F.Supp. 74 (N.D.W.Va. 1996). A mental health patient brought an action under the Americans with Disabilities Act (ADA) against a county and county officials for alleged statutory and constitutional violations which occurred when the patient was picked up on a mental health warrant. The district court denied the defendants' motions to dismiss, finding that the action was timely and that the patient stated a claim under ADA. The patient claimed he was held for a time in a padded cell, was handcuffed and shackled, was not given proper treatment or a hearing, and was not allowed to use a bathroom, change clothes or eat without handcuffs. The court found that the inmate was unable to communicate with his family, was unable to attend to his personal hygiene, and was isolated and segregated in a manner that the ADA was designed to prevent. (Monongalia County Sheriff's Department)

U.S. Appeals Court
TELEPHONE

U.S. v. Van Poyck, 77 F.3d 285 (9th Cir. 1996). After a defendant was convicted in federal court of armed robbery and conspiracy to commit armed bank robbery he appealed, challenging the audiotaping of his telephone calls while he was confined as a pretrial detainee. The appeals court found that audiotaping of the calls did not implicate the Fourth Amendment and did not violate Title III of the Omnibus Crime Control and Safe Streets Act. The court found that the detainee did not have a subjective or reasonable expectation of privacy in his telephone calls at a jail, that the detainee knew of the policy of audiotaping calls before he made his first phone call, that the detainee signed a form warning him of monitoring and taping, and that the detainee read signs about the phones warning of taping and read a prisoners' manual that warned of the recordings. (Metropolitan Detention Center, Los Angeles, Federal Bureau of Prisons)

1997

U.S. District Court
MEDICAL SCREENING

Carty v. Farrelly, 957 F.Supp. 727 (D.Virgin Islands 1997). Detainees and inmates housed in a criminal justice complex asked the court to find officials in civil contempt of a consent decree. The district court found that the consent decree comported with the principles of the Prison Litigation Reform Act (PLRA) because it was narrowly drawn, extended no further than necessary to correct the violation of federal rights, and was the least intrusive means necessary to correct the violations. The court found the officials in contempt for failing to comply with the terms of the consent decree, and continued noncompliance with a court order requiring officials to pay detainees' and inmates' attorney fees. The officials admitted they never fully complied with the order and failed to make meaningful progress toward reducing the inmate population. According to the court, medical care was inadequate in violation of the Eighth Amendment, where an on-site nurse and physician and two part-time nurses serviced 168 to 190 prisoners, sick call was administered by prison security staff instead of medical staff, prisoners were not seen promptly as needed, the facility did not maintain adequate equipment for emergencies, personal hygiene items were not routinely distributed, intake health evaluations were inadequate, and the facility failed to offer outdoor access to all inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. District Court
TELEPHONE

Hahn v. City of Kenner, 984 F.Supp. 424 (E.D.La. 1997). An arrestee brought a § 1983 action against city officials in connection with his arrest and detention. The district court held that a three hour and 12 minute delay before his telephone call, or a five hour and 32 minute delay between arrest and release in pre-dawn hours, were not unreasonable. (City of Kenner, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE

Hutto v. Davis, 972 F.Supp. 1372 (W.D.Okl. 1997). The administrator of the estate of an arrestee who suffered a fatal drug overdose after a plastic bag containing methamphetamine which he had ingested burst, brought an action against jail employees asserting § 1983 and employees asserting state law claims. The district court found that jail employees whose contact ended when the arrestee was booked and jailed were not deliberately indifferent to the serious medical needs of the arrestee. But the court found that employees with later contact were not entitled to qualified immunity and that a fact issue existed as to whether the failure of these employees to obtain medical care violated the Eighth Amendment. The court held that the plaintiff failed to establish a failure to train or to supervise on the part of the county. The court found that it is necessary to establish that a particular training program is inadequate rather than alleging that a particular officer may be unsatisfactorily trained, because the shortcomings of an officer may have resulted from other factors than a faulty training program. The court held that the plaintiff failed to establish that the arrestee's death was the result of either exertion of improper control by supervisors or the failure of supervisors to control employees, as required to recover against a municipality based on a claim of inadequate supervision. (Garvin County Jail, Oklahoma)

U.S. Appeals Court
SEARCHES

Swain v. Spinney, 117 F.3d 1 (1st Cir. 1997). A female arrestee brought a § 1983 action against police officials alleging that a female officer's strip search of her, under orders from a lieutenant, violated her federal and state rights. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court reversed and remanded, finding that issues of fact as to the basis for the search precluded summary judgment on the issues of reasonableness and qualified immunity. The appeals court affirmed the district court's finding that § 1983 liability was not established based on the city's alleged failure to properly train the police force as to its uniform policy on strip searches. According to the court, police officers were supplied with policy guidelines, and there was no evidence of any other incidents which would have put the city on notice that its approach was inadequate. The plaintiff was arrested for shoplifting and was suspected of having possessed a small baggie of marijuana. (North Reading Police Station, Massachusetts)

1998

U.S. District Court
SEARCHES

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

U.S. District Court
SUICIDE
SCREENING

Ellis v. Washington County, Tenn., 80 F.Supp.2d 791 (E.D.Tenn. 1998). The mother and the minor child of a pretrial detainee who committed suicide while confined brought a § 1983 wrongful death action against a city, county and jail officers. The district court granted summary judgment in favor of all but one of the defendants, finding that they were not liable for failing to take special precautions and to screen the detainee for suicidal tendencies in violation of his constitutional rights because the detainee did not exhibit a strong likelihood that he would attempt to take his own life. But the court denied summary judgment for a jail officer who allegedly failed to make other officers aware that he had seen the detainee initiate his hanging until ten minutes later. (Washington County Jail, Tennessee)

U.S. District Court
SEARCHES

Foote v. Spiegel, 995 F.Supp. 1347 (D.Utah 1998). A detainee sued state and county officials alleging violation of her rights because she was strip searched. The district court denied summary judgment for the arresting officers and the case was affirmed in part, reversed in part, and dismissed in part on appeal. On remand, the district court held that there was not reasonable suspicion to strip search the detainee after a pat down search did not reveal contraband and the detainee was not being placed in the general jail population. The court found that suspicion that the detainee was under the influence of drugs or alcohol did not provide adequate justification for the search. The court found the county liable for failing to promulgate an adequate strip search policy that included reasonable suspicion of concealed contraband that would not be discovered through a rub search as a prerequisite to the strip search of a detainee who is not entering the general jail population. The court noted that flaws in the jail policy were known for a year prior to this incident and the county's refusal to change the policy exhibited deliberate indifference to the likelihood of future violations. (Davis County Jail, Utah)

U.S. District Court
TELEPHONE
ADA-Americans with
Disabilities Act

Hanson v. Sangamon County Sheriff's Dept., 991 F.Supp. 1059 (C.D.Ill. 1998). An arrestee who was deaf alleged failure to provide him with an adequate means of communication in his suit against a county, a sheriff and a sheriff's department. The district court held that the arrestee stated a claim under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he stated a § 1983 claim against the sheriff. The arrestee alleged that he was denied, due to his disability, the opportunity to post bond and make a telephone call when the department failed to provide, despite his repeated requests, alternatives to a conventional telephone such as an interpreter or a text telephone device (TTD). The arrestee alleged that the sheriff maintained an express policy of forbidding officers from allowing deaf arrestees to use a TTD which was stored in an office. The court denied qualified immunity for the sheriff, noting that while there may have been a lack of caselaw directly on the point, the ADA and Rehabilitation Act had been enacted several years prior to the arrest, and at least two Courts of Appeal had held that the Rehabilitation Act was applicable to prisons and prisoners. The plaintiff was arrested and informed officers that he was deaf. The officers did not attempt to communicate with him, but rather placed him in a police van with eight to ten other arrestees and transported him to a local jail. Throughout the night the arrestee attempted to notify the officers of his need for alternative assistance in contacting his friends and/or relatives, to no avail. He was eventually assisted in making a telephone call by an officer and made arrangements to be released on bail, several hours after all of the others who were arrested at the same time had been released. (Sangamon County Jail, Illinois)

U.S. Appeals Court
SCREENING
SUICIDE
CLASSIFICATION

Liebe v. Norton, 157 F.3d 574 (8th Cir. 1998). A detainee's wife and the administrator of his estate sued a county, sheriff and jailer for damages under § 1983, after the detainee committed suicide while incarcerated in a county jail. The district court dismissed the case and the appeals court affirmed, finding that the jailer who classified the detainee as a suicide risk, took preventive measures by placing the detainee in a temporary holding cell and removing his shoes and belt, and periodically checked on the detainee, did not act with deliberate indifference to the detainee's health or safety. The court found the jailer was entitled to qualified immunity because the steps taken by the jailer were affirmative, deliberate steps to prevent suicide. The court held that the county could not be held liable on a § 1983 claim of failure to supervise, based on the on-the-job training received by the jailer, the county's failure to test the jailer on his knowledge of a manual outlining suicide prevention policies, and the county's decision to leave the jailer in charge. The appeals court found that this did not rise to the level of deliberate indifference. The court also found that the county was not liable for failing to train jailers on the risks of inmate suicides, when the county had in place policies intended to prevent suicides and no suicides had occurred at the jail before the detainee's. The court found that failing to lead the jailer, step by step, through policies in the manual did not amount to failure to train. The detainee had been arrested and taken to the jail and was intoxicated at the time of his admission. The admitting jail officer classified the detainee as a "suicide risk" because he admitted to previously attempting suicide and was on both clonazepam and valium. The officer checked on the detainee at intervals ranging from 7 minutes to 21 minutes, but did not turn on the audio system in the holding cell. The detainee used his long-sleeved shirt to hang himself on a metal-framed electrical conduit in the cell. The jailer was the only staff member on duty at the time. Before being assigned to work by himself he was given on-the-job training for 2½ weeks. The jailer was scheduled to attend a jailer training course but it was not offered for another month. At the time of the suicide the jailer had worked full-time for approximately two months. (Fall River County Jail, South Dakota)

U.S. District Court
SEARCHES

Magill v. Lee County, 990 F.Supp. 1382 (M.D.Ala. 1998). Pretrial detainees filed a civil rights action challenging a county's policy of conducting limited strip searches before detainees are placed in cells. The district court granted summary judgment in favor of the county, finding that the policy was reasonable and did not violate the Fourth Amendment. According to the court, no heightened suspicion was necessary before jail officials could conduct limited strip searches because the dangers posed by the detainees to the jail were as high for one inmate as for another, no matter what crimes those inmates were charged with. The policy required removal of outer clothing only, and was found reasonable by the court given that small objects, such as pills, needles, or other contraband, could pose difficult and dangerous situations for jail administrators. The court noted that the searches were conducted by officers of the same sex as the detainee, and that pat-down searches or use of a metal detector would not find drugs or small objects. (Lee County Jail, Alabama)

U.S. District Court
CLASSIFICATION

Malik v. Mack, 15 F.Supp.2d 1047 (D.Kan. 1998). A prisoner challenged his isolation from other inmates during his evaluation for placement in the general population. The district court granted summary judgment for the defendants, finding that the isolation was not an unreasonable incursion upon his First Amendment rights. The prisoner was isolated during evaluation based on information received prior to his arrival at the facility. The court also found that the routine placement of restraints incident to a cell move, during which the prisoner allegedly sustained a wrist injury and a cut lip, did not constitute excessive force in violation of the Eighth Amendment. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
MEDICATIONS

McNally v. Prison Health Services, Inc., 28 F.Supp.2d 671 (D.Me. 1998). A pretrial detainee sued a county jail and its private health care provider alleging that his constitutional rights and his rights under the Americans with Disabilities Act (ADA) were violated by the denial of his human immuno-deficiency virus (HIV) medication. The district court denied the defendants' motion to dismiss, holding that the plaintiff had sufficiently plead a § 1983 claim that the defendants were deliberately indifferent to his serious medical needs. The court found that the detainee suffered significant harm from the jail's failure to provide care, noting that he suffered from fevers, night sweats, and infections from cuts received from his arresting officers. The detainee was arrested by a local police department and was injured by the arresting officers, suffering blackened eyes and cuts on his nose. The local police took him to a hospital for treatment before taking him to the county jail. Upon admission to the jail, the detainee told employees of the private health care provider that he had been diagnosed with HIV and was on a strict regime of medication. He identified the medication and the dosage, and told medical personnel that he had missed a dosage due to his arrest and needed one at that time. Although the detainee's private physician confirmed his medication and dosage, he was denied his medication throughout his three-day stay at the jail. He was hospitalized immediately after his release for several days as the result of being deprived of his medication. (Cumberland Co. Jail, Maine, & Prison Health Serv., Inc.)

U.S. District Court
MEDICAL SCREEN-
ING
PSYCHOLOGICAL
SCREENING

Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court found many violations of inmates' constitutional rights, including: failing to fully screen incoming inmates for infectious diseases such as tuberculosis or to detect mental health problems; failing to provide for a sick call system that ensured access to care and that was capable of handling emergencies; failing to carry out medical orders by neglecting to provide prescribed medication or disregarding special recommendations for surgery or specialized care, when officials were subjectively aware of conditions that required intervention; failing to consistently administer "unit dose" medication; failing to provide transportation to scheduled specialty appointments and physical therapy; failing to provide prescribed medical diets; failing to adequately train, supervise or retain health care personnel, which resulted in rampant under-staffing and the consequent impossibility to adequately meet the needs of the inmate population; failing to hospitalize inmates whose mental health condition required the therapeutic environment of a mental health treatment facility; allowing several mentally ill patients to continue to cohabitate with the general population without being tendered any type of mental health treatment; failing to timely provide necessary medical care outside their facilities when not available internally, due in part to a lack of personnel or transportation means; and demonstrating "manifest ineptitude" in maintaining medical records. (Administration of Correction, Puerto Rico)

1999

U.S. Appeals Court
SCREENING

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999). The administrator for the estate of a deceased detainee sued officers and county officials under § 1983 asserting constitutional violations, negligence, gross negligence, negligent training and negligent supervision. The district court granted summary judgment for the defendants on all § 1983 claims and declined to assume supplemental jurisdiction over state law claims. The appeals court affirmed. The detainee had been arrested and transported to the county detention center and the following day was declared brain dead. During his booking the detainee was acting irrationally, his speech was slurred, and he kept repeating in an intoxicated manner "I can't believe this is all over a traffic ticket." He was then taken to a cell and strip searched, but at the conclusion of the search attempted to crawl out of the cell and a struggle ensued. Officers used pepper spray to subdue him. Early the next morning the detainee began acting belligerent again. He resisted being moved to another cell and a five-man cell extraction team pinned him face down. During the struggle he was sprayed with pepper spray and he was punched several times. Once restrained, he was carried face down to another cell and was placed in four-point restraints. A few minutes later he appeared to be unconscious and was checked by medics and was found to be "okay." Another officer then noticed that the detainee was not breathing, CPR was initiated and he was taken to a local hospital where he was found to be brain dead. The appeals court held that officers at the county detention center were not deliberately indifferent to the medical needs of the deceased detainee, either when the detainee was booked or during his custody. A trained medic was on hand in the booking area and discerned no sign of a medical problem. According to the court, the failure to clean pepper spray off of the detainee in a timely manner was, in the first instance, due to the detainee's violent response to the officer's offer to wash the spray off, and in the second instance was due to the need to rush the detainee to a hospital for emergency care. (Fairfax County Adult Detention Center, Virginia)

U.S. Appeals Court
MEDICAL SCREEN-
ING
TRANSLATOR

Qian v. Kautz, 168 F.3d 949 (7th Cir. 1999). An arrestee brought a civil rights action alleging arrest without probable cause, and wrongful denial of adequate medical treatment. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part, and reversed and remanded in part. According to the court, "when the events leading to this lawsuit began to unfold, ambiguous behavior combined with a severe language barrier led to the arrest" of the plaintiff. After his initial arrest, police determined that he could be released, but "because he did not want to pay for a hotel room, they then re-arrested him, consigned him to the drunk tank, and failed to recognize that he was suffering from a serious medical condition." The sheriff's department translator spoke the wrong Chinese dialect, making communication very difficult. The appeals court affirmed summary judgment for the defendants on the medical care claim, noting that absent evidence that county sheriffs' officials actually knew of the arrestee's medical condition, they could not be held liable. (LaPorte Co. Jail, Indiana)

2000

U.S. District Court
MEDICAL SCREENING

Butler v. Coitsville Tp. Police Dept., 93 F.Supp.2d 862 (N.D. Ohio 2000). The administrator of a deceased detainee's estate brought a § 1983 action alleging that the detainee's rights were violated by his arrest and detention. The district court granted summary judgment for the defendants and dismissed state law claims without prejudice. The district court found that the detainee's slurred speech and unsteadiness during his arrest did not make the potential for an alcohol seizure so obvious as to permit the inference that the arresting officer or other law enforcement officers acted with deliberate indifference to the detainee's medical needs. The court noted that although the detainee may have appeared intoxicated, he never complained of physical distress, he signed a medical form stating that he suffered no medical ailment other than "bad knees" and he explicitly stated that he typically suffered no ill effects when he ceased drinking alcohol. The detainee had refused to submit to any sobriety tests and was processed at a township police station. He was then transported to a jail and was placed in a detention cell after completing intake and booking procedures. Seventeen hours after his admission the detainee suffered an alcohol withdrawal seizure in his cell, falling and sustaining a serious head injury. He was immediately taken to a hospital where he died three days later. (Mahoning County Jail, Ohio)

U.S. Appeals Court
SCREENING
SUICIDE

Frake v. City of Chicago, 210 F.3d 779 (7th Cir. 2000). The administrator for the estate of a pretrial detainee who committed suicide in a police lockup sued the city in state court and under § 1983. After removing the action the city moved for summary judgment, which the district court granted. The appeals court affirmed, finding that the city was not deliberately indifferent to the welfare of pretrial detainees. According to the court, even though the city continued to place detainees in cells containing horizontal metal bars despite past suicides by detainees using the bars, there was no evidence that anyone had knowledge that this detainee was suicidal. The court noted that the facility used a thorough screening process and took precautions to protect detainees from the risk of suicide, facility personnel received suicide awareness training, cells were checked every fifteen minutes--which "far exceeds" the hourly checks required in state municipal jail standards, dangerous items were removed the detainees' possession, and cell construction was authorized by state standards. (District 12 Chicago Police Department lockup)

U.S. Appeals Court
SUICIDE

Jacobs v. West Feliciana Sheriff's Dept., 228 F.3d 388 (5th Cir. 2000). Survivors of an arrestee who had committed suicide brought a § 1983 action against a sheriff's department and against the sheriff and deputies. The district court denied individual defendants' motions to dismiss on the ground of qualified immunity and they appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that the sheriff and senior deputy, who knew of a prior suicide under similar circumstances, could have been found to have acted with deliberate indifference to the arrestee's known suicidal tendencies, but that a newly-hired deputy who only followed orders which were not facially outrageous, was entitled to qualified immunity. The arrestee had been placed in a cell that had a significant blind spot and tie off points, and was provided with a blanket and towel even though a prior detainee had hanged himself in the same cell under similar circumstances. The female arrestee had been brought to the local jail by state troopers who informed jail employees that she had tried to kill herself when she was apprehended. She was placed in a "detox" cell which is used to house inmates who are intoxicated, who need to be isolated for security reasons, or who are designated for placement on a suicide watch. The arrestee was placed on a suicide watch, but the cell could be completely observed only if an officer viewed it from an adjacent hallway. The following evening the arrestee was discovered hanging from a light fixture in the cell, having not been observed by jail staff for as many as 45 minutes prior to being discovered. (West Feliciana Parish Prison, Louisiana)

U.S. District Court
SEARCHES

Mason v. Village of Babylon, New York, 124 F.Supp.2d 807 (E.D.N.Y. 2000). An arrestee who was taken into custody based on a traffic warrant that was later determined to have been recalled, filed an action under § 1983 alleging false arrest and illegal search. The district court found that a no-contact partial strip search, incident to arrest violated the Fourth Amendment because neither the nature of the offense nor the circumstances of arrest raised any suspicion that would justify such an intrusion. The court noted that the unconstitutionality of a blanket strip-search policy had been well-established. The female arrestee was asked by a female arresting officer to lift her shirt, lower

her pants, and rearrange her undergarments to dislodge any contraband that might be concealed. (Village of Babylon, Second Precinct, New York)

U.S. District Court
SEARCHES

Roberts v. Rhode Island, 175 F.Supp.2d 176 (D.R.I. 2000). A detainee brought an action against corrections officials challenging the constitutionality of policies that require all males committed to the state prison to be subjected to a strip search and visual body cavity search. The district court held that the policies were constitutionally deficient as applied to the detainee, who was searched while detained pursuant to an outstanding body attachment issued by a state family court. The court noted that the policies contained no language concerning what factors might give rise to reasonable suspicion that would permit a constitutional search, and that the policies were universally applied to all pre-arraignment detainees without any prior determination that there is a reasonable suspicion that the detainee may be carrying weapons or contraband. The detainee was searched upon initial admission to the facility and was searched again before being transported to court for arraignment. (Intake Services Center at the Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
SEARCHES
MEDICAL SCREENING

Skurstenis v. Jones, 236 F.3d 678 (11th Cir. 2000). A female detainee brought an action against a county sheriff and sheriff's department staff, alleging that a strip search of her pelvic region violated her Fourth and Fourteenth Amendment rights. The district court granted the defendants' motion for summary judgment in part and denied it in part. The appeals court affirmed in part, reversed in part, and remanded in part. The appeals court held that the jail policy that required each inmate to be strip-searched by a same-sex jail staff member, before being placed in a cell or detention room, violated the Fourth Amendment. But the court found that the detainee's possession of a handgun at the time of her arrest provided the "reasonable suspicion" needed to permit her strip search. The detainee was taken to a bathroom and observed by a female officer, who instructed the detainee to disrobe but did not conduct a body cavity search. A second medically-related search took place in the infirmary, with no one other than the detainee and a male nurses assistant present. The search was conducted pursuant to a contract between the county and a hospital, and involved an examination of the detainee's cranial and pubic hair for lice. The court held that the search was reasonable in manner and scope and did not violate the Fourth Amendment. (Shelby County Jail, Alabama)

U.S. District Court
SCREENING
SUICIDE

Stewart v. Robinson, 115 F.Supp.2d 188 (D.N.H. 2000). The guardian of a pretrial detainee brought a civil rights action against police and county officials to recover for injuries sustained by the detainee as the result of a suicide attempt that left the detainee in a vegetative state. The district court granted summary judgment for the defendants, finding that neither the police department nor the county could be held liable for the suicide attempt. The suicide attempt occurred four days after the detainee was transferred from the police department's custody to the jail. Although police officers were possibly negligent by failing to complete an available intake form, the court found that the department could not be held liable. The court held that the record did not suggest that jail officials or the county were aware that the detainee posed a suicide risk or that they should have known that jail cells posed an unreasonable danger to potentially suicidal inmates. The court noted that police officials apparently failed to inform county jail officials of the detainee's previous suicidal statements when he was transferred to the jail. The detainee attempted to hang himself with a sheet tied around one of the supports of the upper bunk in his cell, but was discovered approximately five minutes later and survived. (Carroll County House of Corrections and Conway Police Department, New Hampshire)

U.S. District Court
SCREENING

Thornton v. U.S. Dept. of Justice, 93 F.Supp.2d 1057 (D.Minn. 2000). An inmate who was a federal prisoner incarcerated at a county jail sought damages arising from injuries he sustained while at the jail. The district court held that a nurse did not treat the inmate with deliberate indifference by failing to refer him to an emergency room for treatment of frostbite the night he was admitted. The court found that a deputy subjectively acted with deliberate indifference when she failed to notify a medical professional immediately about the prisoner's condition. The prisoner informed the deputy that he could not feel most of his toes even though he had been indoors in the custody of the U.S. Marshals for several hours, and that he had walked around outside in frigid January temperatures for many hours before turning himself in. (Anoka County Jail, Minnesota, and United States Marshals Service)

U.S. Appeals Court
CLASSIFICATION

Weiss v. Cooley, 230 F.3d 1027 (7th Cir. 2000). A suspect in a highly publicized rape case, who had been assaulted by fellow inmates while detained in a county jail, brought a § 1983 action against the sheriff, jail commander and a jail officer. The district court dismissed the claims against the sheriff and jail commander and granted summary judgment for the officer. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment for the officer was precluded by a fact issue as to whether the officer had actual knowledge that the suspect faced an objective risk of danger. Affirming the dismissal of the sheriff and jail commander from the action, the appeals court noted that allegations that circumstances were such that assaults on prisoners like the suspect were inevitable, and that the system used to classify inmates for housing safety purposes were inadequate, were insufficient to provide adequate notice to the sheriff and commander in order to sustain an Eighth Amendment claim against them. Upon admission to the jail, the suspect had been asked if he had any enemies in the jail, if he needed any special care, or if he had ever assaulted anyone or was contemplating assaulting anyone, and the suspect answered "no" to each of these questions. (Morgan County Jail, Indiana)

U.S. Appeals Court
SUICIDE
SCREENING

Williams v. Kelso, 201 F.3d 1060 (8th Cir. 2000). The executor of the estate of a jail inmate who committed suicide while in custody sued jail employees under § 1983. The district court dismissed state law claims against health care providers but denied summary judgment for the defendants on certain claims. The appeals court affirmed the grant of summary judgment and reversed the denial of summary judgment on the remaining claims. The appeals court found that even though a psychologist had instructed jailers to check the inmate's vital signs every four to six hours, their failure to follow this instruction over a period of about seven hours was a matter of negligence, at most, and did not show deliberate indifference. The appeals court also held that there was no requirement under the Eighth Amendment that the jailers provide immediate medical attention to a disoriented, confused, belligerent detainee who had been arrested on an alcohol related misdemeanor charge. The court held that jail supervisors were entitled to qualified immunity on the claim of deliberate indifference in failing to initially segregate the inmate from other inmates upon booking. According to the court, the jail officials gave the inmate his medication, placed him in the misdemeanor section of the jail, regularly observed him, had him examined by a psychologist and psychiatrist, and were in the process of transferring him to a treatment center when his suicide occurred, and the inmate had given no overt indication that he was a suicide risk. The court noted that the plaintiff's expert witness even offered the opinion that persons who exhibited the symptoms that the inmate presented do not generally harm themselves. (Faulkner Co. Detention Facil., Ark.)

U.S. District Court
CLOTHING

Wilson v. City of Kalamazoo, 127 F.Supp.2d 855 (W.D.Mich. 2000). Arrestees who were allegedly detained in a city jail without any clothing or covering at all for varying periods of time, brought eight separate actions against the city and others. After the actions were consolidated, the federal district court ruled that the arrestees stated claims for violation of their Fourth Amendment right to privacy and their Fourteenth Amendment right to due process. The arrestees had been detained without clothing or covering for periods ranging from six to eighteen hours with at least limited exposure to viewing by members of the opposite sex. The court noted that the city's legitimate interest in suicide prevention could have been just as well served by less humiliating and degrading means. (Kalamazoo City Jail, Michigan)

2001

U.S. District Court
MEDICAL SCREENING
SHOWER

Canell v. Multnomah County, 141 F.Supp.2d 1046 (D.Or. 2001). An inmate brought a § 1983 action alleging that his conditions of confinement in a county jail violated his constitutional rights. The district court granted summary judgment for the defendants. The district court held that the inmate did not suffer a constitutionally significant injury, sufficient to support a § 1983 action under the Prison Litigation Reform Act (PLRA), as the result of jail officials' failure to shower and "debug" inmates or test them for communicable diseases before double bunking them and mixing them with the general population. The inmate's alleged injuries consisted of toe fungus, occasional constipation, brief denials of food, sanitation, and water, nose sores, and cold winter temperatures. (Multnomah County Jails, Oregon)

U.S. Appeals Court
CLASSIFICATION
TELEPHONE
TRANSLATOR

Chisolm v. McManimon, 275 F.3d 315 (3rd Cir. 2001). A hearing-impaired detainee brought a suit against the warden of a pretrial detention facility and county court system, alleging violations of the Americans with Disabilities Act (ADA), Rehabilitation Act, § 1983 and a state discrimination law, for failing to provide an interpreter and other services. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that the county court system was not entitled to Eleventh Amendment immunity during an ongoing merger with the state court system. The appeals court held that summary judgment was precluded by genuine issues of material fact as to: (1) the effectiveness of alternate aids or services provided to the detainee when the jail failed to provide a sign language interpreter during the intake process, activate closed captioning capabilities on a prison television, (2) provide a text device for transcribing telephone calls; and whether pencil and paper were effective auxiliary aids in place of a sign language interpreter; and (3) whether exceptions to institutional rules on telephone calls were an effective alternative to providing special telephones. The court held that extradition was a "program" within the meaning of ADA and the Rehabilitation Act such that the court was required to ensure the ability of the detainee to participate in the hearing. When the detainee arrived at the detention facility on a Saturday, he was locked down in his cell to keep him apart from the general population until Monday when facility classification staff arrived. This practice was applied to all detainees admitted when classification staff members were not working at the facility. Such unclassified detainees consumed meals in their cells and did not have television or telephone privileges. When the detainee was not provided with an interpreter at intake he became upset and was eventually interviewed by a nurse, who concluded that he was a suicide risk. He was kept in solitary lockup from Saturday until Tuesday. On Monday he was taken to meet with a classification staff member, where he was interviewed and was given a medium security classification. But the staff member had described the detainee as a "vagrant" in spite of the fact that he had worked for the U. S. Postal Service for 13 years and had lived at the same address for three years. This error added two points to his classification score, moving him from "minimum" security to "medium." (Mercer County Detention Center, New Jersey)

U.S. District Court
MEDICAL SCREENING

Davis v. City of New York, 142 F.Supp.2d 461 (S.D.N.Y. 2001). A former inmate brought § 1983 claims against a city and various public officials to recover damages allegedly suffered when he was

kept in medical isolation for a seven-day period after refusing to give a blood sample at initial medical screening for religious reasons, and for not providing him with a vegetarian diet. The district court held that the inmate's right to free exercise was not violated when he was placed in brief medical isolation as a consequence of his refusal to consent to giving a blood sample, but the court found it necessary to review whether the alleged restrictions on shower and telephone access were more severe than were appropriate. The court also found that fact questions precluded summary judgment for the defendants on the claim that the denial of vegetarian meals violated the inmate's free exercise right. (City of New York)

U.S. District Court
SEARCHES

Doan v. Watson, 168 F.Supp.2d 932 (S.D.Ind. 2001). Former inmates filed a § 1983 suit against a former and current sheriff, individually and in their official capacities, alleging unconstitutional strip search policies. The district court granted summary judgment in favor of the former inmates, finding that the jail policy of stripping inmates and requiring them to undergo a delousing procedure was an unreasonable search. According to the court, the policy authorized a blanket strip search without justification. The court noted that the Prison Litigation Reform Act (PLRA) did not require the former inmates to produce evidence of physical injury to pursue their claims. The inmates had been arrested for misdemeanor offenses and were subjected to intake searches before entering the general jail population. (Floyd County Jail, Indiana)

U.S. District Court
SCREENING
SUICIDE

Holland v. City of Atmore, 168 F.Supp.2d 1303 (S.D.Ala. 2001). Survivors of an inmate who committed suicide during his period of pretrial confinement filed a § 1983 action. The district court granted summary judgment in favor of the defendants. The court held that jail staff did not have a duty to take any precautions to prevent his suicide, where the inmate had not shown a strong likelihood of taking his life. The inmate had been admitted to the city jail after being arrested for driving under the influence and other offenses. He was booked into the facility and locked down. Within thirty minutes he was found dead or dying in his cell, having used his shoelaces to hang himself. The plaintiffs had argued that the inmate had previously attempted to take his own life and that city police knew about these attempts. (Atmore City Jail, Alabama)

U.S. Appeals Court
IDENTIFICATION
PSYCHOLOGICAL
SCREENING

Lee v. City of Los Angeles, 250 F.3d 668 (9th Cir. 2001). A former prisoner and his mother sued under § 1983 and the Americans with Disabilities Act (ADA) alleging that city and county officials ignored the prisoner's obvious mental incapacitation and failed to take steps to identify him before arresting him under a warrant issued for a fugitive with the same name. The prisoner had been extradited to New York and was incarcerated for two years before the error was discovered. The district court dismissed all claims. The appeals court reversed and remanded, finding that the plaintiffs stated a claim for failure to train and other violations under § 1983. (City and County of Los Angeles, California, and New York State Department of Correctional Services)

U.S. District Court
SEARCHES

Lee v. Perez, 175 F.Supp.2d 673 (S.D.N.Y. 2001). An arrestee brought an action against a correctional officer, alleging he had been unconstitutionally strip searched. The district court entered a jury verdict in favor of the officer and the arrestee moved for reconsideration. The district court granted the motion, finding that there was insufficient evidence to support the jury's conclusion that the officer relied on permissible factors in making his decision to perform a body cavity search on the arrestee. According to the court, the officer testified that he had not considered the nature of the two misdemeanors with which the arrestee had been charged and could not identify any characteristic of the arrestee that led to his conclusion that the arrestee might have been carrying contraband. The arrestee had spent the night in a police holding cell and was arraigned in court the next morning. Bail was set at \$250 but the arrestee was not allowed to post bail at the police station using money that had been in his possession at the time of his arrest. He was transported to the local jail where he was processed in. The intake process included a "personal hygiene check/visual body search" which consisted of having the arrestee remove his clothes, followed by a visual inspection of his body. The officer contended that this hygiene check was not the same as a strip search because it did not require the inmate to open his mouth or bend over and spread his buttocks. (Orange County Correctional Facility, New York)

U.S. District Court
MEDICAL
SCREENING

Lutz v. Smith, 180 F.Supp.2d 941 (N.D. Ohio 2001). A man who was arrested for domestic violence brought a § 1983 action against a sheriff and others alleging deliberate indifference to his medical needs while he was in custody. The district court granted summary judgment in favor of the defendants. The court found no violation in the actions of the sheriff's staff when they declined to accompany the arrestee in an ambulance that transported him from the jail to a hospital to treat him for an overdose of medication he ingested before he was arrested. The arrestee was returned to the jail after receiving treatment. The court held that the county acted properly by ensuring that the arrestee received treatment when he became ill in custody and the county was not required to do so in a manner that made it responsible for the expense of the treatment. (Hardin Co. Jail, Ohio)

2002

U.S. District Court
SCREENING
MEDICAL
SCREENING

Bozeman v. Orum, 199 F.Supp.2d 1216 (M.D. Ala. 2002). The representative of the estate of a pretrial detainee brought a § 1983 action against a sheriff and officials at a county detention facility, alleging that the detainee's death was the result constitutional violations. The district court held that detention officers' use of force to restrain the detainee did not violate his Fourteenth Amendment right against the use of excessive force, even though the officers

threatened to "kick" the detainee's "ass." The officers apparently punched or slapped the detainee, and the detainee died as the result of the officers' actions, but the court found that some level of force was necessary to restore order where the detainee was apparently undergoing a mental breakdown in his cell. The court held that nurses at the detention facility were not deliberately indifferent to the serious medical needs of the detainee when they failed to obtain treatment and medication upon learning that the detainee had been evaluated for mental health problems and prescribed medication in the past. The court noted that the nurses had no knowledge during intake beyond a "slight flag" of past evaluations for mental illness and that the detainee had medication to help him "rest." The court also found that the failure of the detention facility to implement a policy requiring staff to follow up on inmates who had acknowledged past mental health problems or evaluations for mental health problems, did not violate the detainee's Fourteenth Amendment right to adequate medical care. The court held that municipal jails are not required to provide on-site psychiatric care for their inmates, and that the detention facility was not required to train its officers in diagnosing or treating mental illness. (Montgomery County Detention Facility, Alabama)

U.S. Appeals Court
SEARCHES

Cuesta v. School Bd. of Miami-Dade County, Fla., 285 F.3d 962 (11th Cir. 2002). A high school student sued a school board and a county under § 1983 alleging she was subjected to an unconstitutional strip search. The district court entered summary judgment for the school board and county and the student appealed. The appeals court affirmed, finding that there was reasonable suspicion to strip search the student. The student had distributed, with eight other students, an anonymous pamphlet on school grounds that included an essay in which the author "wondered what would happen" if he shot the principal, teachers or other students. The students were arrested for hate crime violations and transported to juvenile and adult detention facilities, depending on their ages. The plaintiff student, who was over 18 years old, was booked and strip searched at an adult detention facility pursuant to a policy that required the search of all newly-arrested felons. (Turner Guildford Knight Correctional Facility, Metro-Dade County, Florida)

U.S. District Court
MEDICAL
SCREENING

Estate of Hampton v. Androscoggin County, 245 F.Supp.2d 150 (D.Me. 2002). The estate of a county jail inmate filed a state court action against a county and county officials. The case was removed to federal court, where the defendants moved for summary judgment. The federal district court granted summary judgment for the defendants, finding that the county was not liable under § 1983 and that the sheriff was immune from liability under a state court claims act. According to the court, even if the inmate's death was attributable to a jail officer's refusal to summon emergency medical personnel upon the inmate's request, and there was evidence of another incident in which officers denied another inmate his medication, there was no evidence that either incident involved so many jail staff as to reflect a widespread practice. The inmate had been brought to the jail in the afternoon, and he told an admitting officer that he did not suffer from any disability, did not require any form of assistance, and was not taking any medication at the time. He was assigned to a maximum security cell block where he was checked by staff every fifteen minutes. The following day he did not indicate to jail staff that he was in need of medical attention when they checked on him every fifteen minutes. During a cell check an officer found him lying on his back and he was unresponsive. A physician's assistant who was working in the jail at the time responded to a "code blue" and found jail staff administering mouth-to-mouth ventilation to the inmate. Paramedics arrived at the jail and continued efforts at resuscitation and he was transferred to a local hospital, where he was pronounced dead approximately an hour after he had initially been found unconscious in his cell. (Androscoggin County Jail, Maine)

U.S. Appeals Court
IDENTIFICATION

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002). An arrestee who was detained by a police officer and held for 12 days on outstanding warrants for the arrest of his twin brother brought a § 1983 action alleging false arrest and violation of due process. The district court entered judgment upon jury verdict in favor of police officer defendants, but against the city defendants in the amount of \$11,250, and awarded attorney fees in the amount of \$92,211 to the arrestee. The city appealed and the appeals court affirmed, finding that the city's detention of the arrestee deprived him of a significant liberty interest and that the city's warrant procedures constituted "policies" for the purposes of § 1983. The court noted that neither a fingerprint comparison nor a Department of Motor Vehicles check was completed during the arrestee's 12 days of detention and that the arrestee continuously protested the mistaken identity. He was only released after he filed a citizen's complaint from jail. (City of Long Beach, California)

U.S. Appeals Court
MEDICAL
SCREENING

Gibson v. County of Washoe, Nev., 290 F.3d 1175 (9th Cir. 2002). The widow of a manic depressive detainee who suffered a heart attack and died while in a county jail, sued the county, sheriff and various officials under § 1983. The district court entered summary judgment for the defendants and the widow appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that several fact issues precluded summary judgment: whether the county's policy of delaying medical screening of combative inmates posed a substantial risk of serious harm to the detainee; whether the county was aware of that risk; whether the nurse who received the detainee's medication at the jail was deliberately indifferent; and whether the county was liable based upon its policy regarding handling of prescription medication. The appeals court found that deputies who had contact with the detainee after he was admitted to the jail, and who took part in the forcible restraint that preceded his death, were not deliberately indifferent to his medical needs because they knew nothing of his mental condition beyond what they could observe. (Washoe County Jail, Nevada)

U.S. District Court
SEARCHES

Helton v. U.S., 191 F.Supp.2d 179 (D.D.C. 2002). Female arrestees brought an action under the Federal Tort Claims Act (FTCA) alleging that United States Marshals conducted unlawful searches and invasions of their privacy. The district court held that the alleged strip search of arrestees satisfied the elements of a tort intrusion upon seclusion. The court noted that the Fourth Amendment precludes police or prison officials from conducting a strip search of an individual arrested for misdemeanors or other minor offenses, unless there is reasonable suspicion that the individual is concealing contraband or weapons. The five women plaintiffs had been arrested for unlawful entry in connection with an "anti-fur" demonstration at a department store. According to their complaint, they were compelled "to remove clothing and submit to a strip and squat search" while six men arrested with them were not subjected to such searches. (U.S. Marshals Service)

U.S. District Court
SEARCHES

Murcia v. County of Orange, 185 F.Supp.2d 290 (S.D.N.Y. 2002). An arrestee who was, according to the court, "the unfortunate victim of mistaken identity" was arrested by city police officers who believed he was the same person named in a federal arrest warrant. The arrestee brought a § 1983 claim because he was subjected to one strip search at the city police department and three subsequent strip searches at a county correctional facility. The district court granted the arrestee's motion to amend his complaint, dropping false arrest claims but allowing the strip search claims to continue. The court noted that if the county sheriff's alleged policy of strip-searching every arriving prisoner existed, it was clearly unconstitutional and there could be no qualified immunity defense. (Orange County Correctional Facility, New York)

U.S. Appeals Court
SUICIDE
SCREENING

Pardue Ex Rel. Christian v. Ashe, 36 Fed.Appx. 199 (6th Cir. 2002). The next friend and next of kin to an arrestee who committed suicide while being held in a county jail on a domestic assault charge, brought a § 1983 action alleging that the county failed to recognize the arrestee's suicidal tendencies. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the arrestee did not have a constitutional right to be screened correctly for suicidal tendencies, and that he did not show a strong likelihood that he was going to attempt suicide such that the failure to take precautions amounted to deliberate indifference to his serious medical needs. The appeals court also held that there was no evidence that the county had a policy or custom of deliberate indifference to pretrial detainees who were in similar situations to the arrestee. The arrestee had been admitted to a county jail and was placed in a temporary holding cell near the intake desk. Sometime during the night the arrestee hanged himself and his body was discovered the following morning. The appeals court held that "this single incident is not sufficient to impose liability on Wilson County because it does not establish a pattern of unconstitutional conduct." (Wilson County Criminal Justice Complex, Tennessee)

U.S. District Court
MEDICATION
MEDICAL
SCREENING

Turner v. Kight, 192 F.Supp.2d 391 (D.Md. 2002). A female detainee who was arrested on an outstanding warrant associated with a civil matter and detained at a jail brought an action against county and state officials. The district court granted summary judgment for the defendants. The court held that arresting and booking officers were deliberately indifferent to the detainee's serious medical needs when they allegedly removed a neck brace and seized medication, ignoring her complaints of pain and muscle spasm. The detainee sometimes limped and walked with a cane, but the court found that the detainee's alleged pain did not rise to the level of a serious medical need. The court granted qualified immunity to the officers, finding that there was no indication that the officers actually knew of, and ignored, a serious need for medical care. The court also found that the officers were not deliberately indifferent by failing to dispense medication in response to the detainee's complaints of pain, where the officers were not permitted to dispense medication and they notified the detention facility's medical staff of a nonemergency situation, who did not respond during the six hours the detainee was confined. (Montgomery County Detention Center, Maryland)

U.S. Appeals Court
USE OF FORCE

Williams v. City of Las Vegas, 34 Fed.Appx. 297 (9th Cir. 2002). An arrestee brought a suit against a city and correctional officer alleging the use of excessive force. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the officer's use of force and restraints when the arrestee refused to cooperate during the booking process was not excessive under either the Eighth Amendment standard for prisoners, nor the Fourteenth Amendment standard for pretrial detainees. The court noted that all of the officer's conduct associated with this claim had been videotaped from three different positions by surveillance cameras. According to the court, the use of waist and leg restraints on the inmate in his jail cell did not violate the Eighth Amendment, where the inmate had refused to stand still during a frisk search and displayed erratic and seemingly uncooperative behavior. (Las Vegas Department of Detention, Nevada)

2003

U.S. Appeals Court
SUICIDE

Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The mother of a pretrial detainee who attempted suicide brought a § 1983 action against a police officer, alleging deliberate indifference to the detainee's risk of attempting suicide. The district court denied summary judgment for the officer and the officer appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by an issue of fact as to whether the officer was aware that the detainee was on the verge of trying to commit suicide and whether the officer was deliberately indifferent to the detainee's safety. The court noted that the detainee's right to be free from deliberate indifference to the risk that he would attempt suicide was clearly established. The detainee was

transferred to a county facility after a brief period of detention in a city jail. When he was admitted to the county facility he was not placed on suicide watch, but he did ask to speak to a mental health advisor. He was assigned to a holding cell that contained a telephone with a strong metal cord. When the police officer called the county facility to complain about calls from the inmate, county employees found the detainee unconscious, hanging from the wire telephone cord. The detainee remained in a vegetative state after his unsuccessful suicide attempt. (Champaign County Correctional Facility, Illinois)

U.S. District Court
PROCEDURES

Edwards v. Oberndorf, 309 F.Supp.2d 780 (E.D.Va. 2003). A driver arrested for driving under the influence challenged his detention. The district court dismissed the action, finding that housing the driver in a holding cell for a minimal period of time following the first court's order for the inmate's release, while the sheriff's department checked on whether a detainer was still lodged by a second court, did not violate due process. The court noted that the detainee was held for less than 20 hours, and that there was no evidence of negligence or malice. (Virginia Beach City Jail, Virginia)

U.S. Appeals Court
CLASSIFICATION

Johnson v. State of California, 321 F.3d 791 (9th Cir. 2003). An African-American state prison inmate brought an action against prison administrators, alleging that a prison policy of using race as a factor in assigning a new inmate's initial cell mate violated the equal protection clause. The district court dismissed the case, but the appeals court reversed in part and remanded. On remand, the district court granted summary judgment for the prison administrators on qualified immunity grounds. The inmate appealed and the appeals court affirmed. The appeals court held that the policy did not violate the equal protection clause, given high racial tensions and violence existing at the prison. The court found the policy to be rationally related to a legitimate penological interest in protecting the safety of inmates, and found the policy to be neutral in that it did not provide an advantage or disadvantage to any race. The court noted that the policy was limited to the first 60 days after admission to a prison and that the remaining time in prison was integrated. Administrators had told the court that ignoring race in initial cell assignments would increase violence in those cells and would have a ripple effect on inmates and staff. The officials told the court that the suggested alternatives to the policy-- asking inmates about their gang affiliation or racial biases-- were not reasonable. (California Department of Corrections)

U.S. District Court
SEARCHES

Wood v. Hancock County, 245 F.Supp.2d 231 (D.Me. 2003). A misdemeanor arrestee brought a civil rights action against a county and county officials, alleging he was subjected to unconstitutional strip searches while in jail. The district court denied the defendants' motions for judgment on the pleadings or for summary judgment. The court held that the arrestee stated a claim, precluding judgment on the pleadings. The court found that summary judgment was precluded by genuine issues of fact as to whether the jail policy of strip searching misdemeanor arrestees after contact visits was reasonable, and whether the jail had a custom of conducting strip searches upon admission. The court noted that further proceedings were needed to determine if it was a "custom" to strip search misdemeanor arrestees without reasonable suspicion that an arrestee harbored contraband or weapons, and that evidence suggested that officers did not comply with recording requirements for strip searches. (Hancock County Jail, Maine)

2004

U.S. District Court
CLASSIFICATION

Carmichael v. Richards, 307 F.Supp.2d 1014 (S.D.Ind. 2004). A county jail prisoner who was injured by his cellmate brought a § 1983 action against a sheriff in his individual and official capacities, claiming that the sheriff failed to take reasonable measures to ensure his physical safety, and did not provide necessary medical care. The district court granted summary judgment in favor of the defendants. The court held that the sheriff could not be held individually liable for failing to ensure the physical safety of a medium security inmate who was injured by a maximum security inmate, absent evidence that the sheriff knew of a substantial risk that the inmate would be harmed, or evidence of a causal link between the policy of mixing of medium and maximum security prisoners and the increased risk of violence. The court also found that the sheriff was not liable in his official capacity. The jail had three types of cell classifications: maximum, medium and minimum security. Inmates are classified by the shift leader who is on duty at the time an inmate arrives at the jail. (Johnson County Jail, Indiana)

U.S. Appeals Court
LENGTH
PROCEDURES

Chortek v. City of Milwaukee, 356 F.3d 740 (7th Cir. 2004). Arrestees brought a § 1983 action alleging that their arrests for violating a ticket-scalping ordinance was a violation of their Fourth Amendment rights. The district court entered judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the arrests were reasonable under the Fourth Amendment and that the length of detention, from three to fourteen hours, was reasonable. The court noted that the arrests were humiliating, that the arrestees were held in a police vehicle until one-half hour after the start time for the event, that they were subjected to body cavity searches, prevented from making phone calls, and forced to share holding cells with other prisoners. The court concluded that the arrestees were not subjected to more harmful treatment than would be involved in a normal custodial arrest. Police officials explained that the detention center to which the arrestees were taken was busy at the time of the arrests, supervisors were required to monitor the booking process, and the arresting officers processed the paperwork as quickly as possible. (Milwaukee Police Department, Wisconsin)

- U.S. District Court
MEDICAL SCREENING
- Quint v. Cox*, 348 F.Supp.2d 1243 (D.Kan. 2004). A former jail detainee brought a § 1983 suit against a county sheriff, alleging that the sheriff showed deliberate indifference to the detainee's lithium poisoning. The district court entered judgment in favor of the sheriff. The court held that although the detainee may have been visibly suffering from lithium toxicity during his first few days of incarceration, there was no evidence that the sheriff was aware that the detainee was facing a substantial risk of serious harm, or that he personally saw the detainee at any time. The court noted that under the sheriff's leadership, there was a policy of dispensing all inmate medicines at set times, and of prompt response to inmate medical problems. The court found that the sheriff's failure to provide a medical nurse or specially trained person to dispense medications to the detainee did not amount to deliberate indifference, where the jail was required to regularly provide medication, and there was a procedure in place for responding to medical emergencies that was followed in the detainee's case. (Meade County Jail, Kansas)
- U.S. District Court
MEDICAL SCREENING
SUICIDE
- Stiltner v. Crouse*, 327 F.Supp.2d 667 (W.D.Va. 2004). The father of a pretrial detainee who committed suicide in jail brought a § 1983 action against jailers. The district court granted summary judgment in favor of the jailers. The court held that the jailers were not deliberately indifferent to the substantial risk of harm to the detainee, and that they were not negligent in their handling of the detainee. The 39-year-old detainee had been arrested for suspicion of operating a vehicle under the influence of drugs and was waiting for her bond to be posted at a county jail. She was placed in a holding cell. Several hours later jailers discovered that she was unconscious. After attempts to resuscitate her were unsuccessful she was transported to a local hospital where she was pronounced dead. An autopsy showed that her death was caused by either self-hanging or strangulation by another person. According to the court, the detainee did not request medical aid from the jail nurse who saw her initially, and there was no indication to jailers that she might be a danger to herself. (Buchanan County Jail, Virginia)
- U.S. Appeals Court
MEDICAL SCREENING
- Sullivan v. Bornemann*, 384 F.3d 372 (7th Cir. 2004). An arrestee brought an action against police officers and hospital staff. He had been arrested for disorderly conduct but jail staff refused to admit him to confinement without medical clearance because of his high breathalyzer test result. The arresting officers took him to the emergency room of a local hospital where he failed to voluntarily produce a urine sample. The emergency room doctor ordered a catheterization, and the officers restrained the arrestee during the brief procedure. The district court entered judgment for the defendants and the arrestee appealed. The appeals court affirmed. The appeals court held that the officers' acquiescence in the hospital nurse's request to help her restrain the arrestee during the catheterization process did not violate the arrestee's Fourth Amendment rights. The court found that the State's substantial interest in assuring the medical stability of the pretrial detainee outweighed the arrestee's due process right to refuse unwanted medical treatment. (Shawano County Jail, Wisconsin)
- U.S. Appeals Court
SCREENING
PROCEDURES
- Turney v. Waterbury*, 375 F.3d 756 (8th Cir. 2004). A mother brought a civil rights action to recover damages related to the in-custody suicide of her son. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the sheriff was not entitled to qualified immunity, where the sheriff knew of, but did not investigate, the arrestee's earlier suicide attempt at a jail from which he was transferred, did not permit a jailer to complete the arrestee's intake form, placed the arrestee in a cell alone with a bed sheet and exposed ceiling bars, and ordered the jailer not to enter the arrestee's cell without backup and yet left the jailer as the only staff member on duty at the jail. Before the arrestee was transferred to the jail in which he committed suicide, he had told jail staff that "he was going to hang it up" and shortly thereafter he was found in his cell with a bed sheet tied around his neck. During his processing into the next jail he told staff he did not want to return to prison, and that he would die and take someone with him if he received more than a 15 year sentence. The court found that training provided to county officials was not inadequate, where the county provided manuals that informed police officers how to recognize and respond to suicide risks. (Bennett County Jail, South Dakota)
- 2005
- U.S. District Court
SEARCHES
- Calvin v. Sheriff of Will County*, 405 F.Supp.2d 933 (N.D.Ill. 2005). County inmates sued a sheriff under § 1983 alleging that a strip search policy violated the Fourth Amendment. The court granted summary judgment in favor of the inmates. The court held that the blanket policy of strip-searching persons arrested on failure-to-appear (FTA) warrants in misdemeanor traffic cases violated the Fourth Amendment. The court also found a Fourth Amendment violation in the blanket policy of strip-searching persons who were returned to jail for processing after being ordered released on traffic or misdemeanor charges, absent individualized suspicion or probable cause that a person was concealing contraband or weapons. The court noted that the searches were unconstitutional, even though arrestees had been given an opportunity to post bond before the searches, and notwithstanding that persons arrested on FTA warrants were intermingled with the general population. (Will County Adult Detention Facility, Illinois)

U.S. District Court
CLASSIFICATION
USE OF FORCE

Esmont v. City of New York, 371 F.Supp.2d 202 (E.D.N.Y. 2005). An arrestee filed a § 1983 action alleging that city health inspectors and police officers violated her constitutional rights during her arrest and detention for violations of a city nuisance law. The district court granted summary judgment in favor of the defendants. The court held that the officials were not deliberately indifferent to the arrestee's serious medical needs when they did not comply with the arrestee's request for hot tea during an asthma attack, but called emergency medical services instead. The female detainee was handcuffed to a cross bar outside of a holding cell for over 7 hours, with no place to rest her elbow. She was required to use a bathroom that was monitored by a security camera and an officer insisted on watching her while she used the bathroom. She sought medical attention two days after her release for damage caused to her wrist by the handcuffing. The court held that the detainee was not exposed to excessive force, where the jail had only one cell and officials had a policy of not placing prisoners of opposite sexes in the cell together. The court noted that there was no evidence that the handcuffs were too tight, and the arrestee did not request that her handcuffs be loosened. (City of New York Police Department)

U.S. District Court
MEDICAL SCREENING

Estate of Adbollahi v. County of Sacramento, 405 F.Supp.2d 1194 (E.D.Cal. 2005). Representatives of the estates of two county jail detainees, and one inmate, who committed suicide while in their cells brought a § 1983 action. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the county was not liable for failing to train jail personnel in suicide prevention where the county had a policy of periodic observation of cell occupants. The court noted that an officer, lacking knowledge that a detainee was suicidal, made no observations, and falsely entered on duty logs that he had done so. The court held that summary judgment was precluded by material issues of fact as to whether a county jail nurse ratified, condoned, and encouraged the deliberately indifferent behavior of a social worker who conducted an allegedly perfunctory interview of an inmate who later committed suicide. The court found that summary judgment was precluded by material issues of fact as to whether a psychiatric services clinician satisfied applicable standards of care, under state law. (Sacramento County Jail, California)

U.S. Appeals Court
MEDICAL SCREENING
MEDICATION

Garretson v. City of Madison Heights, 407 F.3d 789 (6th Cir. 2005). A pretrial detainee brought an action against a city, police department and individual police officers alleging constitutional violations and asserting state law claims. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court held that the diabetic detainee who had allegedly been deprived of insulin while in custody suffered a serious deprivation of necessary medical treatment, for the purpose of a Fourteenth Amendment deliberate indifference claim. The detainee was later admitted to a hospital for emergency treatment and stayed in the hospital for several days. The court denied summary judgment for the booking officer and the officer who escorted the detainee to her cell, both of whom were allegedly informed by the detainee of her diabetic condition and need for insulin. (Madison Heights Police Department Lock-Up, Michigan)

U.S. Appeals Court
PROCEDURES

Golberg v. Hennepin County, 417 F.3d 808 (8th Cir. 2005). A detainee brought a civil rights action against a sheriff and county, alleging that she was subjected to an excessive delay in releasing her from custody. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed. The detainee had appeared in court in response to a felony fraud charge. The court continued the proceeding but ordered the detainee to be booked at the detention center before her release. When detention center officials discovered that the detainee had two outstanding warrants they required her to post bail before she could be released. As a result, she remained in custody for 32 hours, including ten hours after her father posted the required bail. The court noted that the detainee conceded that the officials had probable cause to detain her after the outstanding warrants were discovered. The appeals court held that the Fourteenth Amendment substantive due process analysis applied to the constitutionality of the delayed release, and that the failure to process the detainee more rapidly did not rise to the level of deliberate indifference. The court found that a sign advising detainees that completing their paperwork might take "more than eight hours" did not show reckless disregard. The court held that the county could not be liable under § 1983 for adopting administrative procedures that allegedly slowed the bail posting and release process, absent a showing that the procedures violated federal law on their face or were intended to deprive detainees of their constitutional rights. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
SUICIDE

Harvey v. County of Ward, 352 F.Supp.2d 1003 (D.N.D. 2005). The surviving spouse of a jail inmate who died after a suicide attempt brought an action under § 1983 and state law, alleging deliberate indifference to the inmate's known risk of suicide. The district court granted summary judgment in favor of the defendants. The district court held that the plaintiff failed to establish that the sheriff and jail administrator knew of the inmate's potential risk of suicide. According to the court, evidence of conversations between the spouse and jail employees about the inmate's suicide risk, an officer's note that the inmate's wife thought that they should keep an eye on the inmate, and another officer's report that the inmate may have been trying to save up some of his medications to take at another time, was insufficient to establish that the sheriff and jail

administrator knew of the inmate's potential risk of suicide. The court found that the county was not deliberately indifferent to the training of its employees on inmate suicide prevention. The court held that the jail's suicide prevention policy appeared reasonable and comprised an effort to prevent suicides, even if the policy had not been updated in recent years, and the jail was not accredited by the American Correctional Association (ACA). The court noted that the policy set forth a detailed list of factors to identify potentially suicidal inmates, set forth a procedure for identification and screening of inmates, and required ongoing training in the implementation of suicide prevention and intervention for all staff. (Ward County Jail, North Dakota)

U.S. Appeals Court
PROCEDURES
LENGTH

Luckes v. County of Hennepin, 415 F.3d 936 (8th Cir. 2005). An arrestee brought a § 1983 action against a county and a sheriff related to his 24-hour detention after his arrest. The district court granted summary judgment in favor of the defendants and the arrestee appealed. The appeals court affirmed, finding that the arrestee's due process rights were not violated by his twenty-four hour detention following his arrest for an outstanding bench warrant, since the length of the detention did not shock the conscience and the arrestee did not complain of any mistreatment by jail staff. The arrestee had failed to pay fines for two traffic citations and bench warrants had been issued. His license had also been suspended. He was stopped and cited for driving without a license and then he was arrested pursuant to the bench warrants. He was placed in a holding cell, where an officer told him that he had "picked the worst day to be here" because the jail had just activated a new computerized jail management system and problems were encountered. A sign posted in the jail asked inmates to "be patient" and that it "may take more than eight hours" to process their paperwork. During his 24-hour detention the arrestee was repeatedly placed in overcrowded cells with persons arrested for crimes that were significantly more violent in nature than failure to pay traffic fines. He endured threats and intimidation from other inmates, as well as mockery prompted by his speech impediment. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
SEARCHES

Nilsen v. York County, 382 F.Supp.2d 206 (D.Me. 2005). County jail inmates brought a class action suit against a county, claiming that the practice of forced disrobing of all incoming inmates, in the presence of an officer, was an unauthorized strip search. The parties submitted a proposed settlement for court approval. The district court approved the settlement, in part. The court found that the practice of having inmates remove their clothing in the presence of an officer was the equivalent of a strip search conducted without cause. The county agreed to create a \$3.3 million settlement fund, from which members of the class would be compensated. The court approved higher "incentive" payments of \$6,500 to the first class representative, and \$5,500 and \$5,000 to the other two class representatives, noting that they put considerable time into the case and were required to give embarrassing deposition testimony. They also received unfavorable publicity regarding their arrest and humiliation, due to the small size of the county and the ease of their recognition. The court noted that a privacy factor was strong in this case, and that requiring individual class members to prove damages would stifle individuals who are too embarrassed to discuss their searches. The court rejected the proposal that would have awarded twice as much to females. The proposal had been based on the assertion that females had two areas of the body subject to privacy protection. The county contended, even when the settlement was offered, that its policy was constitutional because the officers were looking for contraband in the clothing and were not intentionally viewing arrestees' naked bodies. (York County Jail, Maine)

U.S. District Court
MEDICAL SCREENING

Patrick v. Lewis, 397 F.Supp.2d 1134 (D.Minn. 2005). The heirs and next of kin of an arrestee who died while in detention brought an action alleging that officers violated the arrestee's Fourth and Fourteenth Amendment rights by failing to seek medical attention for the arrestee after he was involved in a motorcycle accident. The district court granted summary judgment on the basis of qualified immunity for the officers in part, and denied it in part. The court held that officers did not violate the Fourth Amendment in failing to summon medical aid during the booking process, noting that the arrestee refused medical attention after being treated by paramedics at the scene of the accident. The court found that an overnight jailer who made cell checks periodically throughout the night was not deliberately indifferent to the arrestee's serious medical needs, even though the arrestee died in his cell sometime in the early morning from complications of a blunt force chest injury. The court noted that there was no indication that the jailer heard the arrestee's alleged call for help during her overnight shift, or knew that the arrestee had serious injuries. The court denied summary judgment on the claim that the jailer was deliberately indifferent, finding it was precluded by a genuine issue of material fact as to whether the jailer delayed in summoning aid for the arrestee after she discovered that he appeared not to be breathing. (Brooklyn Park Police Department, Minnesota)

U.S. District Court
IDENTIFICATION

Perez-Garcia v. Village of Mundelein, 396 F.Supp.2d 907 (N.D.Ill. 2005). A county jail detainee brought an action against a county and sheriff under § 1983 alleging violation of his due process rights, and asserting claims for false imprisonment. The district court granted the defendants' motion to dismiss in part, and denied it in part. The court held that the detainee's complaint against the sheriff sufficiently stated a claim for deprivation of due process rights, where the detainee alleged he was jailed for nearly one month over his vigorous and repeated protests that he

was the wrong person, that he provided jail personnel with his identification card and repeatedly told them he was not the named suspect, that his physical appearance did not match the suspect's description, and that his detention continued for a day after a court ordered his release. According to the court, the detainee sufficiently alleged that a policy, practice or custom of the sheriff's department caused the alleged deprivation, and that the sheriff was responsible for setting and supervising jail policies and procedures that did not require confirmation of the detainee's identity. (Lake County Jail, Illinois)

U.S. District Court
SEARCHES

Powell v. Barrett, 376 F.Supp.2d 1340 (N.D.Ga. 2005). Former detainees at a county jail initiated a class action complaining about "blanket strip searches" conducted on inmates when they initially entered or returned to the jail. The detainees also alleged that they were detained beyond their scheduled release dates. The district court dismissed the action in part, and denied dismissal in part. The court granted qualified immunity to the sheriffs with respect to the Fourth Amendment claims challenging the jails search policy, which required detainees to submit to a visual "front and back" inspection upon leaving a shower, without regard to reasonable suspicion. An arrested individual would be assigned to a room with thirty or forty other arrestees, asked to remove his clothing, and instructed to place the clothing in a box. As a group, the arrestees were required to shower and then, standing in a line with others, were visually inspected front and back by deputies. The court found that the policy did not violate clearly established rights of detainees at the time the searches were allegedly performed in 2003 and 2004. The court noted that some of these searches involved persons who were returning from court proceedings and who were entitled to be released from the facility. (Fulton County Jail, Georgia)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 397 F.Supp.2d 115 (D.Me. 2005). A class action suit was brought against a county, its sheriff, and jail officers claiming that the Fourth Amendment rights of some detainees were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. The district court held that the county violated the Fourth Amendment by adopting a policy that allowed for strip searches of all detainees alleged to have committed felony offenses, although the sheriff was granted qualified immunity because the law on this matter was not clearly established at the time the policy was implemented. The policy provided for the strip-searching of all detainees alleged to have committed non-violent, non-weapon, non-drug felonies. The court found that the county and the sheriff were liable for a policy that called for the strip searches of detainees alleged to have committed misdemeanors, without reasonable suspicion. According to the court, the sheriff was responsible, in his individual capacity, for Fourth Amendment violations arising from strip searches of all detainees alleged to have committed misdemeanors without a showing of reasonable suspicion that they were harboring contraband on or within their bodies. The court found that the sheriff was aware of the custom of these universal strip searches and did not take effective action to halt the practice. The court noted that specific standards that described which strip searches may be undertaken in jails and prisons had been issued by the state attorney general. The state corrections department had conducted a review of the jail's policy and procedure manual and informed the sheriff that the policy pertaining to body searches needed to be revised to comply with the attorney general's rules for searches. (Knox County Jail, Maine)

U.S. District Court
MEDICAL SCREENING

Thomas ex rel. Smith v. Cook County Sheriff, 401 F.Supp.2d 867 (N.D.Ill. 2005). The administrator of a detainee's estate brought an action arising from the death of the detainee at the jail, allegedly due to inadequate medical attention. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the administrator had standing to sue on behalf of the surviving spouse and next of kin, and that the allegations were sufficient to state most of the § 1983 claims. The court found that allegations of conspiracy were insufficient to state a claim. The court held that the allegations were sufficient to remove the shield of immunity under a state tort immunity act by pleading "willing and wanton conduct." According to the court, allegations that an institutional policy, whether an express policy or a widespread practice, led to the death of the detainee due to deliberate indifference to the detainee's medical needs, were sufficient to state a § 1983 claim. The detainee was suffering flu-like conditions at the time of arrest and he complained of these symptoms to medical personnel during his initial screening at the jail. Three days later his condition worsened and he requested medical attention from several officers, who refused and told him he was just "dopesick." The next three days the detainee, and fellow detainees on his behalf, requested medical attention and their requests were denied by officers and medical technicians, and even made written requests. The detainee was found unconscious on the floor of his cell on the seventh day after his admission and he died of meningitis later that day. (Cook County Department of Corrections, Illinois)

2006

U.S. District Court
IDENTIFICATION

Atkins v. City of Chicago, 441 F.Supp.2d 921 (N.D.Ill. 2006). A former inmate sued the Illinois Department of Corrections and state officials under § 1983, charging them with having violated his constitutional rights by his wrongful month-long detention at a correctional center. The district court held that the officials to whom the arrestee protested that he had been misidentified were

not entitled to qualified immunity, where the inmate claimed that his constantly reasserted claims of misidentification were never investigated. The court noted that his date of birth, physical appearance and Social Security number differed from that of the wanted suspect, and the officials had ready access to both parties' fingerprints, such that it would have been easy to confirm that he was not the man named in a warrant. (Stateville Correctional Center, Illinois)

U.S. District Court
ADA- Americans with
Disabilities Act

Bircoll v. Miami-Dade County, 410 F.Supp.2d 1280 (S.D.Fla. 2006). A deaf motorist brought an action against a county, alleging that his arrest for driving under the influence (DUI) and subsequent detention violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA). The motorist alleged that throughout the arrest process, the county failed to establish effective communication because it did not provide him with any auxiliary aids as required by the ADA and RA. The county moved for summary judgment and the district court granted the motion. The court held that the motorist's arrest for driving under the influence (DUI) and his subsequent stationhouse detention was not covered by the ADA or the Rehabilitation Act (RA). According to the court, the motorist's arrest was due to his erratic and suspicious driving, not his disability, and following his arrest the police merely communicated the breath test consent form to the motorist, who foreclosed further questioning by requesting an attorney through his driver's rights card. The court held that the detention of the motorist following his arrest for driving under the influence (DUI) did not violate the Rehabilitation Act (RA), where the motorist was not detained because of his disability, but instead was detained because Florida law required a DUI arrestee to be detained for at least eight hours. The court found that the detention of the deaf motorist in solitary confinement following his arrest did not rise to the level of intentional discrimination or deliberate indifference to the motorist's disability, as required to support the award of compensatory damages under the Rehabilitation Act (RA). Corrections facility officers believed that their communication with the motorist was effective and they detained the motorist in solitary confinement as a good faith protective measure, not as a discriminatory act. (Miami-Dade County, Florida)

U.S. Appeals Court
RESTRAINTS

Calvi v. Knox County, 470 F.3d 422 (1st Cir. 2006). A female arrestee brought a § 1983 action against a city, city officers, a county, and county officers alleging excessive force. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed. The court held that an officer who handcuffed the arrestee in the customary manner by cuffing her hands behind her back did not use excessive force, even if the officer knew that the arrestee had a hand deformity. The court noted that the officer's decision to not deviate from the standard practice of placing handcuffs behind the back was a judgment call. The arrestee had told the officer to be gentle because she was frail and had recently undergone elbow surgery. The officer double-locked the handcuffs behind her back so that they would not tighten. He then marched her outside, deposited her in his cruiser, and belted her in for transport to the jail. Upon arriving at the lockup, the arrestee was transferred to the custody of a jail officer, who unlocked the handcuffs, patted her down, and placed her in a holding cell. After other required aspects of the booking process had been completed, another jail officer fingerprinted the arrestee, who claimed that the officer who fingerprinted her repeatedly pushed her fingers down hard, in spite of being told that she had a hand deformity. She also claimed that the fingerprinting caused injuries to her wrist and her surgically repaired middle finger. (Knox County Jail, Maine)

U.S. District Court
PROCEDURES
SCREENING

Carroll v. City of Quincy, 441 F.Supp.2d 215 (D.Mass. 2006). A pretrial detainee who was injured when he fell in a cell after being left with his hands handcuffed behind his back, sued a city and city police officers, alleging negligence and violations of his federal and state civil rights. The detainee fell as he attempted to exit the cell when he was still handcuffed. It was later determined at the hospital that the detainee had a blood alcohol content of 0.37. The detainee allegedly sustained serious injuries, including a subdural hematoma, traumatic brain injury, depressive illness and seizure disorder. The district court held that genuine issues of material fact existed as to whether city police officers had subjective knowledge the detainee's highly intoxicated state, and whether they acted with deliberate indifference when they left him with his hands handcuffed behind his back. The court found that the officers' conduct in leaving the highly intoxicated pretrial detainee in a cell was not undertaken pursuant to any city policy or custom, as required for the imposition of municipal liability, where the city had rather detailed written policies restricting the use of handcuffs. The court noted that an officer testified that if an arrestee was too intoxicated to be booked, it was the usual practice to put the arrestee in a cell until he/she sobered up and, during that period, the handcuffs would be removed unless the detainee was acting violently. According to the court, the officers' conduct in leaving the detainee alone with his hands handcuffed behind his back was not caused by deliberately indifferent policies of the city, where the city's policies clearly delineated the proper procedures for the use of restraints on intoxicated detainees and the handling of such detainees. (City of Quincy Police Station, Massachusetts)

U.S. District Court
SEARCHES

Dare v. Knox County, 465 F.Supp.2d 17 (D.Me. 2006). In a class action, persons strip-searched by jail officials agreed to a consent decree. The district court approved the agreement, issuing an injunction ensuring compliance with the Fourth Amendment law governing strip searches of certain arrestees. The court enjoined the county from strip searching any persons charged with a crime that does not involve weapons, violence or controlled or scheduled substances during the jail

admission process, while they are being held awaiting bail or a first court appearance, or after being arrested on a default or other warrant, unless the officer or person conducting the strip search has reasonable suspicion to believe the person does possess a weapon, controlled or scheduled substances, or other contraband. The court ordered the sheriff and his successors to keep a written log that records every instance in which a newly-admitted individual is subject to a strip search procedure, with the following information: (1) the date and time of the search procedure; (2) the name of each officer participating in the search procedure; (3) a brief statement of facts found to constitute “reasonable suspicion” for a strip search, to include the crime with which the individual was charged; and (4) the name of the officer who made the determination that “reasonable suspicion” warranted a strip search and who approved the search. The agreement also provided for monetary compensation of persons who had been improperly strip-searched. (Knox County Jail, Maine)

U.S. Appeals Court
MEDICAL SCREENING

Grayson v. Ross, 454 F.3d 802 (8th Cir. 2006). The personal representative of the estate of a pretrial detainee who died following self-mutilation while incarcerated in a jail, brought a civil rights action against the county sheriff, the arresting police officer, and jailers in their individual and official capacities alleging violation of the pretrial detainee’s right to medical treatment and to due process. The district court granted judgment for the defendants and the estate appealed. The appeals court affirmed in part. The court held that: (1) the detainee did not have an objectively serious medical need on intake from the perspective of the arresting police officer, as a layperson; (2) the arresting police officer did not subjectively know that the detainee required medical attention; (3) a reasonable police officer would not have known on intake that the pretrial detainee had an objectively serious medical need; (4) the detainee did not have an objectively serious medical need on intake from the perspective of the jailer, as a layperson; (5) the jailer did not subjectively know that the detainee required medical attention; (6) a reasonable jailer would not have known on intake that the pretrial detainee had an objectively serious medical need; (7) the county did not have an official practice of booking inmates who were hallucinating without providing medical care; and (8) the district court did not abuse its discretion by excluding the Arkansas State Jail Standards from evidence in the trial, as the jail standards did not represent minimum constitutional standards. (Crawford County Detention Center, Arkansas)

U.S. Appeals Court
IDENTIFICATION

Hernandez v. Sheahan, 455 F.3d 772 (7th Cir. 2006). An arrestee brought a § 1983 action against a city and county sheriff’s department, alleging that police and sheriff’s deputies violated his Fourth and Fourteenth Amendment rights by refusing to entertain his claim that he was being held in custody due to mistaken identity. The district court granted summary judgment in favor of city, and entered judgment upon a jury verdict against the sheriff’s department. The arrestee and sheriff’s department appealed. The appeals court affirmed in part and reversed in part. The court held that the sheriff’s department was not entitled to quasi-judicial immunity in the arrestee’s § 1983 action, where units of government were not entitled to immunity in § 1983 actions, and the judge who arraigned the arrestee did not forbid the sheriff’s department from conducting further inquiries into the arrestee’s identity. The court found that the sheriff’s department policy of ignoring an arrestee’s claims of mistaken identity after an arrestee has appeared in court and a judge had ordered him held in custody did not violate the arrestee’s right to due process, as required for the department to be liable under § 1983 to the arrestee. The detainee was held by the department for 13 days after his arraignment on a warrant that had been issued for someone else. The court noted that the judge did not abdicate responsibility to determine the arrestee’s identity or delegate that responsibility to the department, and there was no doubt that the arrestee was the person that the judge ordered held at arraignment. (Cook County, Illinois)

U.S. District Court
SEARCHES

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff’s department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the “prevailing parties” entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the

arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery Co. Jail, New York)

U.S. Appeals Court
MEDICAL SCREENING
MEDICATION

Pietrafeso v. Lawrence County, S. D., 452 F.3d 978 (8th Cir. 2006). A widow, as personal representative of a pretrial detainee who died of an acute asthma attack while detained in a county jail, brought a civil rights action against the county and jailers alleging deliberate indifference to the detainee's serious medical needs. The detainee had arrived at the jail at 7:10 p.m. with an envelope marked with the detainee's name, inmate number, and the following notation in bold red letters: "URGENT Colo. Inter-Correctional Medical Summary Transfer Report DELIVER TO MEDICAL DEPARTMENT AT ONCE." In an intake interview, the detainee told the jailer that he suffered from a severe asthma condition. The detainee said he was taking a "bunch" of medications, though he brought with him to the jail only an Albuterol inhaler. After a jury trial, the district court entered judgment in favor of the defendants as a matter of law. The appeals court affirmed. The court held that the head jailer was not deliberately indifferent to the detainee's medical needs in failing to take the detainee to a physician shortly after the detainee's arrival, absent any evidence that the jailer actually knew of and recklessly disregarded the risk of serious harm to the detainee posed by the lack of access to his prescribed medications over the weekend. According to the court, the head jailer's failure to take the detainee and his medical records to the physician was at most negligence. The court held that the jail administrator and the chief deputy were not deliberately indifferent, notwithstanding the chief deputy's instructions to another jailer to attempt to get the inmate's prescriptions filled without taking the detainee to an emergency room. Although the jail administrator failed to ensure that the detainee visited a physician to secure a refill of his prescriptions, the day before the detainee died the administrator had been advised by a physicians assistant that an emergency room visit was not necessary unless the detainee made frequent use of the inhaler. The administrator was following that advice. The court noted that a jailer repeatedly asked others to obtain the detainee's medications and, on his day off, took medical notes transferred with the detainee to the physicians assistant and then visited the detainee in the jail to tell him of the physicians assistant's advice. (Lawrence County Jail, South Dakota)

U.S. Appeals Court
MEDICAL SCREENING

Plemmons v. Roberts, 439 F.3d 818 (8th Cir. 2006). A county jail inmate who had been arrested for failing to pay child support brought a § 1983 action against a county, county sheriff, and corrections officers, alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion for summary judgment and they appealed. The court of appeals held that genuine issues of material fact as to whether the county jail inmate suffered from a serious heart condition, whether jail officials were notified of the inmate's history of heart problems, whether officials failed to recognize that the inmate was suffering from the symptoms of a heart attack that would be obvious to a lay person, whether the officials acted promptly to obtain necessary medical help, and whether the officials were properly trained to deal with such a medical emergency, precluded summary judgment in favor of the defendants. According to the court, the corrections officers' alleged delay in providing medical care to the inmate who was having a heart attack constituted conduct that violated clearly established law, and therefore the officers were not entitled to qualified immunity in the inmate's § 1983 Eighth Amendment deliberate indifference claim. The inmate alleged that two officers inexcusably delayed in summoning an ambulance even though he had told them that he had a history of heart trouble. The court noted that the medical intake form completed by one of the officers did not contain any mention of heart problems. (Pulaski County Jail, Missouri)

U.S. District Court
SCREENING
SUICIDE

Posey v. Southwestern Bell Telephone L.P., 430 F.Supp.2d 616 (N.D.Tex. 2006). The family of deceased county jail detainee sued a county and the company that provided telephone services to a jail, after the detainee hanged himself using the cord from a defective telephone in his cell. The county moved for summary judgment. The district court dismissed the federal claims against all defendants. The court held that jail employees did not violate the due process rights of the detainee by displaying deliberate indifference to his condition while he was being booked and placed in a cell, when they left him alone in the cell, with a broken telephone that had an exposed cord. The court noted that there was no showing that the employees knew the detainee was a suicide risk, and any shortcomings in following the county's suicide screening procedures were at most gross negligence, which was below the deliberate indifference standard needed to impose § 1983 liability. The court held that there was no policy or custom by which county could be held liable under a § 1983 action for the suicide death of the detainee. According to the court, the two previous incidents of detainee suicide, over almost two decades, one of which may have involved telephone cords, did not establish that the existing suicide policy was defective for failure to instruct staff on this contingency, and that failure of staff to follow some suicide prevention policies did not rise to level of deliberate indifference required for county liability. (Dallas Co. Jail, Texas)

U.S. District Court
MEDICAL SCREENING

Pryor v. Dearborn Police Dept., 452 F.Supp.2d 714 (E.D.Mich. 2006). The estate of an arrestee brought a § 1983 action against police officers and a police department, alleging failure to provide the arrestee with adequate medical care. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's condition-- a crack

cocaine overdose-- constituted a serious medical need, and whether the police officers acted with deliberate indifference to the arrestee's serious medical need. The detainee was arrested, and while he was in custody in a police vehicle he consumed an unknown quantity of cocaine. He again ingested cocaine when he was detained at the police station and subsequently collapsed on the floor of his cell and began convulsing. Paramedics were eventually called, and they transported the arrestee to a hospital, where he died three days later. (Dearborn Police Station, Michigan)

U.S. District Court
MEDICAL SCREENING

Shaw v. Coosa County Com'n., 434 F.Supp.2d 1179 (M.D.Ala. 2006). A daughter, individually and as administrator of the estate of her deceased father, brought state and federal law claims against a sheriff and county commission arising from her father's death while he was an inmate in a county jail. The county commission and sheriff filed separate motions for summary judgment, which the district court granted. The court held that the county sheriff did not have the requisite knowledge to be found deliberately indifferent to the serious medical needs of the inmate who failed to disclose his medical condition or to request treatment. According to the court, the sheriff did not violate the Eighth Amendment rights of the jail inmate who died of cardiovascular disease on his second day of incarceration, absent a showing that the inmate disclosed his condition upon admission, that the sheriff otherwise knew that the inmate had a serious condition that required immediate medical treatment, or that the sheriff failed to provide the inmate with treatment with knowledge that failure to do so posed a substantial risk of serious harm. The inmate apparently was not taking his medications and did not request medical treatment. The court found that facially constitutional policies governing booking, supervision, staffing, and training of jail personnel did not, as applied, result in deliberate indifference to the serious medical needs of the inmate, where the policies provided for health screening of inmates upon their admission and medical treatment when requested by inmates, and there was no evidence that the policies were ignored nor any history of widespread problems to place the sheriff on notice of the need to correct the policies, as required to hold the sheriff individually liable. (Coosa County Jail, Alabama)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me. 2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in the class action suit. (Knox County Jail, Maine)

U.S. District Court
MEDICAL SCREENING
SEARCHES

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that

anyone informed him of his right to refuse to consent. Following the medical screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

U.S. Appeals Court
IDENTIFICATION

Tibbs v. City of Chicago, 469 F.3d 661 (7th Cir. 2006). An arrestee brought § 1983 action against an arresting officer and city, alleging Fourth Amendment violations. The district court granted summary judgment in favor of the defendants, and the arrestee appealed. The appeals court affirmed. The court held that a police officer acted reasonably, and thus, did not violate the arrestee's Fourth Amendment right against unreasonable seizure, when he made an arrest on an outstanding traffic warrant. According to the court, although the arrestee had a different middle initial and different birth date than the person listed on the warrant, the arrestee had the same first and last name, and when the officer questioned the arrestee about the warrant, he replied, apparently confusing it with a traffic violation that he had actually committed, that he thought it had been taken care of already. The court found that there was no indication that officer knew that the arrestee was not the person for whom the warrant had been issued. The court noted that when the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, the arrest of the second party is a valid arrest. The court also noted that when a person is lawfully arrested pursuant to a valid warrant, police officers and jailers have no constitutional duty to investigate whether the arrestee is actually the person named in the warrant. (City of Chicago, Illinois)

U.S. District Court
ADA- Americans with
Disabilities Act
TELEPHONE

Tucker v. Hardin County, 448 F.Supp.2d 901 (W.D.Tenn. 2006). Deaf detainees and their deaf mother sued a county and a city, alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a county court did not violate the ADA's Title II, which prohibits discrimination in public services, by asking the deaf mother to serve as interpreter for her deaf sons at their plea hearing, despite her contention that the request deprived her of her right to participate as a spectator. The court noted that the mother expressed no reservations to the court about serving as an interpreter, that she could have refused the request, and, even if the court were somehow responsible for her service as an interpreter, its request was based on her skill in lip-reading and sign language, not on her disability. According to the court, assuming that overnight incarceration was covered by the ADA's Title II which prohibits discrimination in public services, and assuming that placing a phone call was an "aid, benefit, or service" within the meaning of an ADA regulation prohibiting public entities from providing a disabled person aid, benefit, or service that was not as effective as that provided to others, the county did not violate ADA in using relay operators and notes to allow the deaf detainees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. The court noted that information was transmitted and received, which was the same benefit non-disabled person would have received. While in custody, the two brothers communicated with officers through written notes. The jail was not equipped with a teletypewriter (TTY) telephone. Instead, the officers acted as relay operators, using paper and pencil, as they spoke with an operator acting on their behalf to complete the call, which lasted 45 minutes. (Hardin County Jail, and the City of Savannah Police Department, Tennessee)

U.S. Appeals Court
MEDICATION
MEDICAL SCREENING

Vaughn v. Greene County, Arkansas, 438 F.3d 845 (8th Cir. 2006). The sister of a pretrial detainee brought a civil rights action against a sheriff and others to recover damages related to the in-custody death of her brother. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The court of appeals dismissed in part, reversed and remanded in part. The court held that the county sheriff had no knowledge of the pretrial detainee's serious medical needs, and thus was entitled to qualified immunity. The court noted that the sheriff had no personal interaction with the pretrial detainee during his incarceration, and there was no indication that the sheriff knew the pretrial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. According to the court, the sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to the pretrial detainee's serious medical needs, as required to be held individually liable for the detainee's death in a § 1983 action. The 46-year-old detainee had completed a medical intake form indicating he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although he had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. The jail ran out of his anti-depressant medication for two days and the detainee began to act odd. He was moved to an isolation cell to be monitored. He was later found dead in the cell. An autopsy led to the determination that the detainee died of natural causes--arteriosclerotic cardiovascular disease--causing a heart attack that resulted in his death. Detectable amounts of his anti-depressant medication were found in the detainee's system during the autopsy. (Greene Co. Jail, Ark.)

U.S. Appeals Court
MEDICAL SCREENING

Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006). The mother of a detainee who died while in jail brought a § 1983 action, claiming that police officers violated the detainee's rights under the Eighth and Fourteenth Amendments. The district court granted judgment on the pleadings in favor of the officers. The mother appealed. The court of appeals affirmed, holding that the mother lacked standing. The detainee, the daughter of the plaintiff, had been brought to a jail and was being interrogated when she began talking unintelligibly and experiencing seizures. An officer said that she was "faking a seizure" to avoid jail time. She lost consciousness but officers did not request an ambulance for nearly an hour. She had ingested cocaine at the time of her arrest and died from cocaine intoxication. (Howard County Jail and City of Nashville, Arkansas)

2007

U.S. Appeals Court
CLASSIFICATION
SCREENING

Ashford v. U.S., 511 F.3d 501 (5th Cir. 2007). An inmate sued the United States under the Federal Tort Claims Act (FTCA) alleging that the Federal Bureau of Prisons (BOP) was negligent in placing him in a prison population with a gang member who had attacked him in the past. The district court entered summary judgment for the BOP and the inmate appealed. The appeals court reversed and remanded. The court held that the discretionary-function exception

to FTCA did not apply if the inmate raised a concern at a prison intake interview that he would be endangered if he were placed in the prison population with the gang member. The court noted that a prison policy required that the inmate be put into solitary confinement pending an investigation if he raised such a concern, leaving prison officials with no discretion. According to the court, genuine issues of material fact existed as to whether the inmate raised a concern at the prison intake interview, precluding summary judgment. (Federal Bureau of Prisons)

U.S. District Court
SUICIDE
MEDICAL SCREENING

Branton v. City of Moss Point, 503 F.Supp.2d 809 (S.D.Miss. 2007). The son of a pre-trial detainee who had committed suicide while in custody, filed suit against the city and jail officers asserting claims pursuant to the Eighth and Fourteenth Amendments for failure to train, failure to adopt a policy for safe custodial care of suicidal detainees, and failure to adopt a policy of furnishing medical care to suicidal detainees. The detainee was detained on suspicion of drunk driving and was resistant during the booking process. During the booking process the detainee answered a series of questions. When he was asked, "Have you ever attempted suicide or are you thinking about it now?" he responded, "No." He was taken to a cell that was designated for intoxicated or combative prisoners, given a sheet and a blanket, and was locked in the cell at 3:30 a.m. While conducting a jail check at approximately 5:30 a.m., an officer discovered the detainee kneeling in a corner of the cell with the sheet around his neck. He was unable to be revived. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officers had actual knowledge of a substantial risk of suicide by the detainee, and that fact issues precluded summary judgment in the claim against the city and officers in their official capacities. On appeal (261 Fed.Appx. 659), the appeals court reversed and remanded. (City of Moss Point, Mississippi)

U.S. District Court
SEARCHES

Doe v. Balaam, 524 F.Supp.2d 1238 (D.Nev. 2007). A transsexual arrestee, who was strip searched at a county jail, brought an action against the county and county sheriff seeking damages, attorney fees, and a permanent injunction prohibiting the defendants from conducting certain strip searches. The defendants moved for summary judgment. The district court granted the motion. The court held that deputies at the county jail had a reasonable suspicion, based on specific articulated facts coming directly from the transsexual arrestee concealing a sock in his crotch area, that the arrestee was carrying or concealing contraband, so as to justify a strip search of the arrestee prior to being housed in the general jail population. The court noted that the arrestee had turned himself in for a misdemeanor destruction of property charge, and even though he had told deputies that he was a transsexual and that he had a rolled-up sock concealed in his crotch area, the deputies had no way of knowing whether the arrestee was truthful about what he was, in fact, concealing. According to the court, even if there had been a violation of the arrestee's Fourth Amendment rights against unreasonable searches and seizures, the transsexual arrestee failed to allege that the county sheriff knew of and failed to act or prevent any alleged violation, or that any individual employees acted pursuant to an official county policy or custom, as required to state a cognizable § 1983 claim against the sheriff and county for alleged constitutional violations. (Washoe County, Nevada)

U.S. District Court
SEARCHES

Doe No. 1 v. Balaam, 494 F.Supp.2d 1173 (D.Nev. 2007). Arrestees who were subjected to strip searches when they self-surrendered at a county jail and were then released on their own recognizance, pursuant to the sheriff department's contraband control policy, brought an action against the county and county sheriff. The arrestees sought damages, attorney fees, and a permanent injunction prohibiting the defendants from conducting certain strip searches, prohibiting the defendants from engaging in similar unconstitutional conduct in the future, and requiring and ordering the defendants to institute proper training and policy changes. The inmates moved for partial summary judgment and the district court granted the motion. The court held that the county's policy of strip searching all arrestees who self-surrendered to the county jail, absent reasonable suspicion that any arrestee was smuggling contraband, was unreasonable, and thus amounted to deliberate indifference to the arrestees' Fourth Amendment rights, especially given that all of the arrestees were booked and then released on their own recognizance without ever being housed with the general jail population. (Washoe County Detention Facility, Nevada)

U.S. District Court
SCREENING
SUICIDE

Estate of Puza v. Carbon County, 586 F.Supp.2d 271 (M.D.Pa. 2007). The estate of a pretrial detainee who committed suicide brought an action alleging civil rights violations against a county and its corrections officers, and negligence claims against the architect of a county prison. The defendants moved for summary judgment and the district court granted the motion. The court held that correctional and intake officers were not deliberately indifferent to the pretrial detainee's vulnerability to suicide, as was required for the officers' liability under the due process clause for the detainee's suicide. The court noted that the suicide was a "complete surprise" to the police chief who spent one and a half hours with the detainee, the detainee told an officer "he had much to look forward to, and [did] not believe in suicide," the detainee was placed in a cell next to an inmate who was on suicide watch and could be regularly observed, and the officer intervened when he noticed the detainee was still kneeling during a second observation of the detainee. The court found that county employees, through the jail's suicide policy, were not deliberately indifferent as to whether the pretrial detainee successfully committed suicide, as required to support a due process claim. According to the court, the policy was annually reviewed by the Pennsylvania Department of Corrections and was never found deficient, the detainee's screening form did not trigger a suicide watch, and the employees acted without deliberate indifference in allowing the detainee to retain his shoelaces while in his jail cell.

The court held that under the Pennsylvania negligence law, architects who designed the jail had no duty to prevent the suicide of the detainee who strangled himself by tying his shoelace to a ventilation grate above a toilet and applying pressure to his neck. According to the court, there was no direct causal connection between any alleged negligence by the architects and the detainee's suicide. According to the court, while Pennsylvania courts had not addressed this specific issue, other jurisdictions have held that an architect cannot be held liable for a prison suicide: (1) in an Oregon case "We refuse to extend suicide liability to architects, contractors, engineers, and a vast array of other parties involved with the design and construction of buildings...Architects and contractors should not be exposed to endless suicide liability when they have relinquished their authority and control over the facility to the owner;" (2) in an Illinois case "The magnitude of the burden placed on architects to eliminate all fixtures, such as

grilles, that might be of aid in the commission of a suicide and, at the same time, to design an attractive and feasible cell at a reasonable cost would seem to be great;" and in an Alabama case "We hold ... that an architect designing a prison or jail owes no duty to design the prison or jail to be suicide-proof." (Crabtree, Rohrbaugh & Associates, Carbon County Prison, Pennsylvania)

U.S. Appeals Court
SUICIDE
MEDICATION
CLOTHING

Forgan v. Howard County, Tex., 494 F.3d 518 (5th Cir. 2007). The family of a county jail inmate who committed suicide brought an action against the county, county sheriff's department, and various jail officers, alleging deliberate indifference under § 1983 and claims under the Texas Tort Claims Act (TTCA). The inmate was arrested for driving while intoxicated and possession of marijuana. During the booking process, the inmate indicated that he was medicated for a number of mental ailments, including depression, but that he was not thinking about killing himself at the time. Based on this and other information, a jail officer classified the inmate as a "risk" for suicide, meaning that he would be checked every fifteen minutes. The inmate was issued a pair of trousers and a shirt to wear, and he was placed in a holding cell. After approximately one hour, the inmate was found hanging from his jail-issued trousers. The district court granted summary judgment in favor of defendants and the family appealed. The appeals court affirmed. The appeals court held that providing a county jail inmate with non-defective trousers, which the inmate later used to commit suicide, did not equate to "use of property" by the county, within the meaning of the TTCA, and that the county was not liable under § 1983. According to the court, the county was not liable in the § 1983 deliberate indifference claim absent a showing that the county lacked an adequate suicide prevention policy for jail inmates, or that the county failed to adequately train its jail officials in suicide prevention. The court noted that proof of a single incident generally will not support a finding of inadequate training as a matter of custom or policy, for the purpose of establishing § 1983 municipal liability. (Howard County Jail, Texas)

U.S. District Court
MEDICAL SCREENING

Hall v. County of Nemaha, Neb., 509 F.Supp.2d 821 (D.Nev. 2007). A pretrial detainee's survivors sued a city, county, and various city and county officers and officials, asserting various claims under § 1983 in connection with the death of the detainee from an overdose after swallowing his methamphetamine during a roadside stop of a vehicle in which he was riding. The district court granted summary judgment for the defendants in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to whether a deputy sheriff and a jailer knew that the detainee had swallowed the methamphetamine during a roadside stop and whether they ignored the detainee's panting and gasping, his claims that he could not see or breathe, and his crying and screaming that he needed to go to the hospital. The court found that law enforcement officers and other jail officers, who were unaware that the detainee had swallowed his methamphetamine during a roadside stop, were not deliberately indifferent to the detainee's serious medical needs, so as to violate his Eighth Amendment rights, even though he was complaining, uncooperative and acted like an intoxicated person. The court noted that from their perspective, the detainee was behaving like many other "besotted" pretrial detainees who were "plucked from the highway in the wee hours of the night and who suffered nothing more than a drug-induced stupor while cooling their heels in a cell awaiting their turn to see the local magistrate." (Nemaha County, Nebraska)

U.S. District Court
SCREENING
SUICIDE

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (S.D. Ohio 2007). A plaintiff, on behalf of the estate of her son who committed suicide while incarcerated at juvenile detention facility, brought a wrongful-death action against the facility, its superintendent, a non-profit provider that performed suicide evaluations at the facility and a social worker employed by the provider. The plaintiff asserted claims under § 1983 and state law. The facility and non-profit moved for summary judgment. The district court denied the motion. The court held that under the state compulsion test, the private provider that performed suicide evaluations at the juvenile detention facility was not a "state actor" for § 1983 purposes. The court noted that the facility did not exert any control over suicide evaluations and the provider performed evaluations on an as-needed basis using its own standards and procedures. According to the court, the facility had discretion to implement the provider's recommendations resulting from the evaluations. But the court held that the private provider was a state actor for § 1983 purposes because it was performing a "public function." (Central Ohio Youth Center)

U.S. District Court
MEDICATION

Wakat v. Montgomery County, 471 F.Supp.2d 759 (S.D.Tex 2007). The estate of inmate who died in a county jail brought a § 1983 action against the county, jail physician, and other county personnel. The defendants moved for summary judgment. The district court held that the county was not liable based on a county policy, the county was not liable for failure to train or supervise county jail personnel, and a physician did not act with deliberate indifference to the inmate's serious medical needs. The court held that the county sheriff was not liable in his individual capacity under § 1983 to the estate of the inmate absent a showing that he participated in any of the alleged activities in any individual capacity. According to the court, the county was not liable to the estate under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, since the county policy did not directly cause county personnel to fail to seek physician approval to reinstate the inmate's prescription medication. The court noted that although the jail had a written policy of abruptly discontinuing any narcotic medications when inmates were initially processed for booking, regardless of whether the inmate had a valid prescription for the narcotic, the jail also had a policy allowing the narcotic medications to be reinstated with the permission of a doctor. The court found that the county did not act with deliberate indifference in its training and supervision of county jail personnel in dealing with inmates' medical needs, absent a showing of a pattern or a recurring situation of tortious conduct by inadequately trained employees. The court held that the county jail physician did not act with deliberate indifference to the serious medical needs of the inmate, where the physician did not refuse to treat the inmate nor ignore his complaints, prescribed medication when he was first called about the inmate's disorientation and hallucinations, and saw the inmate and diagnosed him with undifferentiated schizophrenia. According to the court, although the physician failed to see signs of withdrawals from benzodiazepine, there was no indication that he intentionally treated the inmate for schizophrenia while knowing that, in fact, he was suffering dangerous withdrawals from a prescription drug to which he was addicted. (Montgomery County Jail, Texas)

U.S. Appeals Court
MEDICAL SCREENING

Williams v. Rodriguez, 509 F.3d 392 (7th Cir. 2007). An arrestee sued a city and others under § 1983, asserting claims for false arrest and deliberate indifference to his medical needs. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The court held that the arrestee's asthma was not objectively serious during the time he was being processed, and therefore an officer was not deliberately indifferent to his medical needs. According to the court, the arrestee's statements to the officer that he had asthma, needed his medication, and could not breathe, made in the context of a request that the arrestee take a breathalyzer test, were insufficient by themselves to show that he was suffering from a serious attack. (City of Chicago Police Department, Illinois)

2008

U.S. Appeals Court
IDENTIFICATION
SEARCHES

Archuleta v. Wagner, 523 F.3d 1278 (10th Cir. 2008). An arrestee brought a § 1983 action against a jailer and others alleging her Fourth and Fourteenth Amendment rights were violated when she was strip searched. The district court denied the jailer's request for qualified immunity and the jailer appealed. The appeals court affirmed the district court decision. The court held that the jailer was not justified in conducting the strip search during booking, following the arrest pursuant to an arrest warrant for harassment, where the arrestee never intermingled with the general jail population but rather was confined in a cell by herself for several hours while awaiting bail. The court noted that three pat down searches had been performed on the arrestee prior to booking, the arrestee was wearing shorts and a sleeveless blouse at the time of booking, the jailer saw that the arrestee did not have any tattoos or moles indicating that she was the culprit, and the crime of harassment was not a crime of violence. The court found that the arrestee had a right not to be strip searched during booking when she was not going to intermingle with the general prison population. She had already been through a pat-down search, and there was no reasonable suspicion that she had a weapon. According to the court, the jailer who conducted the strip search was not entitled to qualified immunity because at the time of this incident it was clearly established that a strip search could be justified if there was a reasonable suspicion that the detainee possessed weapons and the detainee intermingled with the general jail population. The 46-year-old mother of nine had been riding in a family van with some of her children when she was stopped by an officer because there was an extra child in the back seat. The officer arrested her with the belief that she was the person for whom a warrant had been issued. After being booked at the jail it became apparent that she was not the person named in the warrant because she did not have the tattoos and moles that were described in the file. Knowing that the plaintiff was not the person named in the warrant, a jail officer nonetheless continued to process and strip search her. As she was standing naked, she began to lactate. She tried to cover herself but was told by the officer to put her arms down. She was mocked continually by the officer and a male officer during this incident. (Jefferson County Detention Facility, Colorado)

U.S. Appeals Court
MEDICAL SCREENING

Burnette v. Taylor, 533 F.3d 1325 (11th Cir. 2008). The father of a detainee who died while in custody in a county jail brought a § 1983 claim against county sheriff's deputies and jailers, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court reversed and remanded. The court held that the arresting officers were not deliberately indifferent to the serious medical needs of the detainee who died after ingesting a lethal combination of drugs while in custody in the county jail. Although the officers had been warned by the detainee's stepfather that the detainee was strung out on drugs, and one officer observed that the detainee had glassy eyes and appeared to be under the influence of something, the officers saw only that the detainee possessed a bottle of prescription pills. The court noted that neither the detainee nor any family member requested that the detainee be given medical treatment, and the symptoms exhibited by the detainee were not necessarily indicative that medical attention was required. The court found that a jailer was not deliberately indifferent to the serious medical needs of the detainee. The jailer was in charge of dressing out the detainee before he was placed in his cell, and although the jailer found a bottle of prescription pills and observed that the detainee was wasted, the detainee advised that he had just woken up, and no one told the jailer that the detainee needed medical help or needed to be looked after. The court also held that a jailer was not deliberately indifferent to the serious medical needs of the detainee even though the jailer was aware that the detainee was in possession of a bottle of pills when he was arrested, that his speech was slurred, that he needed assistance when he was moved from one cell to another and that his eyes were rolling back in his head at that time, and that the detainee was making a snoring sound at the time of one bed check. According to the court, the jailer was never aware that the detainee could have ingested a lethal amount of drugs, no one ever recommended to the jailer that the detainee be placed in a holding cell or otherwise be observed, and the jailer observed the detainee laughing and talking with his cellmates at one point. (Bacon County Jail, Georgia)

U.S. District Court
IDENTIFICATION

Castro v. City of Hanford, 546 F.Supp.2d 822 (E.D.Cal. 2008). An arrestee brought an action against a county, city, and various law enforcement officers, alleging violation of his Fourth Amendment rights, and asserting various state law claims, including false arrest, and false imprisonment. The district court granted summary judgment for the county. The court held that the county was not liable under § 1983 for the county jail officer's alleged unconstitutional conduct in failing to perform live scan fingerprinting on the arrestee while he was in custody, absent a showing that the county had a policy or practice not to perform such fingerprinting. The court found that county jailers had a reasonable belief that the detainee was the person named in an arrest warrant, and did not have reason to know that the detainee was not the subject of the warrant, and thus, the detainee could not prevail in false imprisonment and negligence claims. The court noted that the jailers relied upon the information provided to them by the arresting officers, and there was no court order or other independent evidence that would have called the lawfulness of the detention into question. (Hanford Police Department, Kings County Jail, California)

U.S. District Court
SEARCHES

Collins v. Knox County, 569 F.Supp.2d 269 (D.Me. 2008). A female arrestee brought a § 1983 action against a county, sheriff, and corrections officers, alleging an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the jail. The district court granted summary judgment for the defendants. The court held that the county did not have an unconstitutional

strip search policy or custom at the county jail, and that the sheriff did not acquiesce to a policy or practice of unconstitutional strip searches. The court found that there was no evidence of an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the county jail, as required for the arrestee to establish a § 1983 claim against the county. The court noted that it's prior determination in an unrelated case, that the county maintained an unconstitutional policy of strip searching all misdemeanor detainees, concerned a period several years prior to the time that the arrestee was detained. The court found that the strip search of the female arrestee upon her admission to jail after self-surrendering on an outstanding felony arrest warrant was reasonable under the Fourth Amendment. The search, in which the arrestee was required to run her fingers through her hair, extend her arms out straight, open her mouth for visual inspection, spread her toes, lift each of her breasts, expose her vagina, squat on her haunches with her back to the officer and, while squatting, cough violently several times, at which time she expelled menstrual fluid, caused the arrestee humiliation and embarrassment. The court found that the search was based on a drug charge in her inmate file, the fact that she made a planned admission to jail which provided the opportunity to conceal contraband, and that she was going to be housed overnight at the jail, which had a problem with contraband. The search was performed by a female officer in the changing area of the shower stall adjacent to the booking area, which was mostly shielded from view by a plastic curtain. (Knox County Jail, Maine)

U.S. District Court
MEDICAL SCREENING

Dean v. City of Fresno, 546 F.Supp.2d 798 (E.D.Cal. 2008). The widow and children of a detainee who died from complications of cocaine ingestion while incarcerated in a county jail, brought an action in state court against a city and two police officers. After removal to federal court, the defendants moved for summary judgment on all claims. The district court granted the motion in part and remanded. The court found that the officers violated the detainee's Fourteenth Amendment right to medical care when they did not obtain medical aid for the detainee after he vomited in the patrol car and rock cocaine was found in the vomit. According to the court, a rational jury could conclude that the officers knew that the detainee had swallowed rock cocaine and had a serious medical condition, and that the officers did not render care themselves, did not call for paramedics, did not take the detainee to the hospital, and did not report the discovery of the rock cocaine in the vomit to the jail nurse. The court found that the officers were entitled to qualified immunity where the detainee, who did not exhibit signs of being high as his detention progressed and who was previously communicative of his symptoms, gave an inaccurate reason to explain his condition and never requested medical treatment. The court held that the plaintiffs failed to show that the city failed to adequately train the officers. According to the court, the undisputed evidence showed that Fresno police officers receive police academy training, field training programs, on the job training, advanced officer courses, and various classes and seminars. The court noted that Fresno police officers are particularly trained: (1) to conduct evaluations to determine if a person is under the influence of a controlled substance, including rock cocaine (for those officers involved in narcotics investigations); (2) to request aid for persons in need of medical care; (3) to recognize an arrestee's need for medical care and provide such care; (4) to be aware of efforts that suspects may make to hide controlled substances, including putting such substances in their mouths; (5) to render medical aid, contact emergency medical services or transport the suspect to the hospital if they have a reasonable belief that a suspect has swallowed a controlled substance, such as rock cocaine; (6) to know that ingestion of cocaine can cause death; (7) to know that arrested persons may have evidence in their mouth; (8) to know that persons arrested on drug charges may attempt to conceal the illegal drugs on their person; and (9) to be suspicious of those arrested and what the arrestees say. (City of Fresno and Fresno County Jail, California)

U.S. District Court
SEARCHES

Jones v. Murphy, 567 F.Supp.2d 787 (D.Md. 2008). A male arrestee brought a class action, alleging that a booking facility's policy of frisking female arrestees while searching male arrestees down to their underwear violated the equal protection clause of the Fourteenth Amendment. The district court granted summary judgment for the arrestee, finding that the booking facility's gender-differentiated search policy was not reasonably related to a legitimate penological interest in preventing arrestees from bringing weapons into the booking facility, and thus violated the equal protection clause of the Fourteenth Amendment. The court noted that the additional staff needed to more thoroughly search female arrestees was not overly burdensome, and searching all arrestees to their last layer of clothing was a readily available constitutional alternative. (Baltimore City Central Booking, Maryland)

U.S. District Court
CLASSIFICATION
MEDICAL SCREENING

Jones v. Oakland County, 585 F.Supp.2d 914 (E.D.Mich. 2008). The personal representative of an arrestee's estate brought an action against a county and two employees of the jail where the arrestee died of heart failure. The arrestee had been brought to the jail on a bench warrant for failing to appear at a court proceeding. Two days after her admission she was found unresponsive in her cell and could not be revived. It was subsequently determined that she died of heart failure (ischemic cardiomyopathy). The defendants moved for summary judgment and the district court granted the motion. The court held that neither a jail interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, nor a jail nurse, who first came into contact with the arrestee when she was summoned to assist in CPR and other efforts to revive the arrestee after she was found unresponsive in her jail cell, were deliberately indifferent to the arrestee's serious medical needs. According to the court, neither employee perceived a substantial risk to the arrestee's health and well-being and yet disregarded that risk, and any purported negligence in the interviewer's assessment of the arrestee's medical needs did not rise to the level of deliberate indifference. The court held that the conduct of the interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, did not amount to "gross negligence" within the meaning of Michigan's governmental immunity statute, and therefore she was not liable for failing to secure immediate medical treatment for a condition that shortly would result in the arrestee's death. (Oakland County Jail, Michigan)

U.S. District Court
MEDICAL SCREENING

Joy v. Healthcare C.M.S., 534 F.Supp.2d 482 (D.Del. 2008). An inmate filed an action under § 1983, raising constitutional claims against a Governor, mayor, and corrections officials. The district court held that the prisoner stated an Eighth Amendment claim against the warden based on his exposure to tuberculosis, where he alleged that the warden was aware that inmates were not thoroughly screened for disease before going into the general population and that correctional medical services did not have a policy in place to examine inmates before placing them into the general population. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
SEARCHES

Munyiri v. Haduch, 585 F.Supp.2d 670 (D.Md. 2008). A motorist who was arrested for driving around a police roadblock and subsequently failing to stop when signaled by a pursuing squad car brought a civil rights action against an arresting officer, police commissioner and warden at central booking facility to which she was transported. She alleged she was subjected to unlawful strip and visual body cavity searches. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations in the motorist's complaint were sufficient to state a supervisory liability claim against the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and the warden at a central booking facility, for intrusive searches to which she was subjected. The court found that the allegations in the offender's complaint-- that she was improperly subjected to a strip search and to a visual body cavity search as the result of a policy implemented by the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and by a warden at the central booking facility-- adequately pleaded the minimum facts necessary to state a supervisory liability claim against the Secretary and the warden under § 1983. The policy allegedly authorized strip searches and visual body cavity searches of all persons admitted to the facility, regardless of the charges filed against them or circumstances surrounding their arrest. (Baltimore Central Booking and Intake Facility, Maryland)

U.S. Appeals Court
SEARCHES

Powell v. Barrett, 541 F.3d 1298 (11th Cir. 2008). Former detainees at a county jail initiated a class action complaining about being subjected to "blanket strip searches" upon entering and/or returning to the jail, as well as their continued detention past their scheduled release dates. The county and city defendants filed motions to dismiss. The district court granted the county defendants' motion in part and denied it in part, and denied the city defendants' motion. The defendants appealed. The appeals court affirmed in part and remanded. On rehearing en banc, the appeals court held that the practice of conducting full body visual strip searches on all jail detainees being booked into the general population for the first time did not violate the Fourth Amendment, regardless of whether there was any reasonable suspicion to believe that the inmates were concealing contraband, and regardless of whether the inmates were arrested for minor offenses or misdemeanors. The plaintiffs were 11 former detainees at the Fulton County Jail in Georgia, all of whom were strip searched upon entering or re-entering the general population. The court divided the plaintiffs into three groups, which overlapped to some extent. The court addressed the detainees in the "the Arrestee Strip Search Class" which consists of the eight plaintiffs who were strip searched as part of the point-of-entry booking process before they were placed into the general jail population for the first time. (Fulton Co. Jail, Georgia)

U.S. District Court
MEDICAL SCREENING

Presley v. City of Blackshear, 650 F.Supp.2d 1307 (S.D.Ga. 2008). A mother brought an action against a city police officer and a county paramedic, arising out of her son's death while detained in a county jail after his arrest. The district court granted the defendants' motion for summary judgment. The court held that the arresting officer was not deliberately indifferent to the serious medical needs of the detainee who died of an apparent drug overdose after being arrested on drug charges and placed into custody at a county jail, absent evidence that the arresting officer actually saw the detainee swallow any drugs that allegedly led to his death. The court held that the county paramedic who responded to the jail was not deliberately indifferent despite any alleged negligence in the paramedic's original diagnosis. The court noted that the paramedic promptly responded to both calls from county jail concerning the detainee, and, each time, examined the detainee to determine whether further medical treatment was needed. According to the court, the paramedic's alleged bad judgment and negligence in caring for the pretrial detainee who died of an apparent drug overdose, was insufficient to show a lack of good faith for the purposes of statutory immunity from negligence or malpractice liability under Georgia law. (City of Blackshear, Pierce Co. Jail, Georgia)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 573 F.Supp.2d 301 (D.Me. 2008). An arrestee brought a § 1983 action against a county alleging a strip and visual body cavity search violated the Fourth Amendment. The district court granted summary judgment for the plaintiff, in part. The court held that jail personnel did not have individualized reasonable suspicion that the arrestee was concealing contraband or weapons, as required to perform a strip and visual body cavity search of the arrestee who had been arrested for felony witness tampering. The court noted that the arrestee was not arrested for a violent felony, spending a night in jail did not implicate sufficiently serious security concerns to warrant a search, the county failed to show the underlying facts of the crime provided individualized reasonable suspicion, and the county failed to establish that the arrestee's conduct required the search. According to the court, a felony categorization alone does not obviate the requirement of individualized reasonable suspicion for a strip and visual body cavity search of an arrestee. (Knox County Jail, Maine)

U.S. Appeals Court
ORIENTATION

U.S. v. Verdin-Garcia, 516 F.3d 884 (10th Cir. 2008). A defendant was convicted in district court of multiple crimes related to drug trafficking conspiracy and he appealed. The appeals court affirmed. The court held that the defendant's consent to the recording of his prison phone calls could be implied from his decision to use the prison telephone and therefore the voice exemplars used from prison recordings were admissible in trial. The court noted that a prison employee testified that prominent signs next to the telephones proclaimed "all calls may be recorded/monitored," in both English and Spanish. The defendant underwent orientation at the prison and received a handbook in his choice of English or Spanish which stated that all calls may be monitored. When the defendant made phone calls, a recorded message prompted him to select English or Spanish and then informed him in the language of his choice that all calls were subject to being monitored and recorded. (Correctional Corp. of America (CCA), Leavenworth, Kansas)

U.S. Appeals Court
SCREENING
SUICIDE

Whitt v. Stephens County, 529 F.3d 278 (5th Cir. 2008). The father of a pretrial detainee who purportedly hanged himself while incarcerated at a county jail brought a § 1983 action against a county, the county sheriff, and unknown jail officials. The district court granted summary judgment in part in favor of jail officials and the sheriff in their individual capacities. The father appealed. The appeals court affirmed. The district court denied the father's motion for leave to amend the complaint to identify the unknown jail officials, and granted summary judgment in favor of the defendants on remaining claims. The father again appealed. The appeals court affirmed. The court held that the amended complaint to substitute named county jail officials for unknown jail officials did not relate back to the

original complaint, for the purpose of avoiding a statute of limitations bar. The court found that the county sheriff was not liable under § 1983 for the death of the pretrial detainee, where the sheriff was not present at the jail until after the detainee was found dead, and there was no showing that the sheriff played any part in the detainee's death, or that the sheriff was deliberately indifferent in failing to attempt to resuscitate the detainee or obtain additional medical care for the detainee. The court held that the county was not liable under § 1983 for the detainee's purported suicide, where the county had adequate policies and procedures for detainees who posed an obvious risk of suicide, the detainee did not indicate that he was suicidal on an intake form or otherwise exhibit obvious suicidal tendencies, and the county was not deliberately indifferent in failing to train or supervise county jail officials. The court noted that in the specific context of jail suicide prevention, municipalities must provide custodial officials with minimal training to detect the obvious medical needs of pretrial detainees with known, demonstrable, and serious medical disorders, but a failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of a constitutional violation. The court found that in the absence of manifest signs of suicidal tendencies, a city may not be held liable for a pretrial detainee's jailhouse suicide in a § 1983 suit based on a failure to train. (Stephens County Jail, Texas)

2009

U.S. District Court
SEARCHES

Allison v. GEO Group, Inc., 611 F.Supp.2d 433 (E.D.Pa. 2009). Arrestees detained in state custodial facilities managed by a private corporation brought a class action against the corporation, alleging the facilities' blanket policy of mandatory strip searches without individualized suspicion violated the Fourth Amendment. The corporation moved for judgment on the pleadings for failure to state a claim upon which relief could be granted and the district court denied the motion. The court held that the arrestees stated a § 1983 claim for a Fourth Amendment violation. The court noted that strip searches in a custodial facility differ qualitatively from other intake procedures which entail some incidental nudity but do not involve visual inspection of the naked body. The court said that the exposure of the naked body to scrutiny by government officers is what makes strip searches more invasive than other admission procedures at a custodial facility. According to the court, the searches involved visual inspection of the arrestees' naked bodies, the searches of named arrestees were not based on reasonable suspicion, and the purported class consisted of arrestees who were either charged with minor offenses or non-violent offenses that did not involve drugs. (George W. Hill Correctional Facility, Pennsylvania)

U.S. District Court
ADA-Americans with
Disabilities Act
TELEPHONE

Bahl v. County of Ramsey, 597 F.Supp.2d 981 (D.Minn. 2009). Two hearing-impaired arrestees, and their respective girlfriend and husband, brought an action against a county, sheriff's department, and city, alleging that they were arrested by city police officers without being provided an American Sign Language (ASL) interpreter and detained at an adult detention center (ADC) without access to an ASL interpreter or auxiliary aids that would have permitted them to communicate with others outside of the ADC. The plaintiffs asserted claims under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Minnesota Human Rights Act (MHRA), and for negligence. The district court dismissed the case in part. The court held that the girlfriend and husband had standing to sue the county, sheriff's department, and city under state and federal anti-discrimination laws, where they alleged that they experienced fear, anxiety, humiliation, and embarrassment because of the defendants' failure to permit the arrestees to contact them. The court found that the girlfriend and husband stated a claim for discrimination under the ADA by alleging that the arrestees requested auxiliary aids to communicate with people outside of the ADC, and that the county's failure to provide such aids precluded their communication with the arrestees. (Ramsey County Adult Detention Center, Minnesota)

U.S. District Court
SEARCHES

Chehade Refai v. Lazaro, 614 F.Supp.2d 1103 (D.Nev. 2009). A German citizen, who was detained by Department of Homeland Security (DHS) officials at a Nevada airport, and later transferred to a local jail, after his name had been erroneously placed on a watch list, brought an action against the United States, DHS officials, a police department, a city, and a police chief, alleging various constitutional violations. The district court granted the DHS and United States motions to dismiss in part, and denied in part. The court held that DHS officials could not bypass constitutional requirements for strip searches and body-cavity searches of non-admitted aliens at a border by sending the German citizen to a detention facility where they allegedly knew strip searches occurred in the absence of reasonable suspicion under circumstances in which the DHS officials could not perform the strip search themselves. According to the court, regardless of any reasonable suspicion that detention center officials had for a strip search, federal officials at the border needed reasonable suspicion for a strip search. The court found that the Fourth Amendment right of a non-admitted alien to be free from a non-invasive, non-abusive strip search absent suspicion to conduct such a search was clearly established in 2006, when the German citizen was detained at an airport, and thus, a DHS officer was not entitled to qualified immunity. The court held that the German citizen who was detained after arriving at a United States airport and was asked to spy for the United States government in order to obtain an entry visa was not subjected to "involuntary servitude" in violation of the Thirteenth Amendment, where the German citizen never actually spied for the United States. (North Las Vegas Detention Center, Nevada)

U.S. District Court
IDENTIFICATION
PROCEDURES
SEARCHES
SHOWERS

Florence v. Board of Chosen Freeholders of County of Burlington, 595 F.Supp.2d 492 (D.N.J. 2009) *Reversed and remanded* 621 F.3d 296 (3rd Cir. 2010); *aff'd* 132 S.Ct. 1510). A non-indictable arrestee brought a class action under § 1983 against counties, county jails, and jail wardens, among others, alleging that the defendants violated the non-indictable arrestees' constitutional rights by their policy of strip searching them without reasonable suspicion. The arrestee sought a preliminary injunction. The district court denied an injunction. The court held that county jail officers' "visual observation" of indictable and non-indictable offenders during intake procedures, which included complete disrobing, followed by examination of nude inmates for bruises, marks, wounds, or other distinguishing features, followed by supervised shower with a delousing agent, constituted a search under the Fourth Amendment. According to the district court, the blanket strip search policy, in the absence of a reasonable suspicion for drugs, weapons, or other contraband, violated the arrestees' Fourth Amendment rights. According to the court, the jails' justification for the policy-- general security concerns and health concerns-- did not trump Fourth Amendment

protections. The court noted that the mere fact that there was ambiguity or inconsistency in a state regulation pertaining to strip searches did not change the fact that the law on the issue was clearly established in a jurisdiction pursuant to case law for nearly twenty-two years, for purposes of qualified immunity. *On appeal* the district court ruling was reversed and remanded. The appeals court found that the jails' policy of conducting strip searches of all arrestees upon their admission into the general prison population was reasonable and that the jails were not required to provide evidence of attempted smuggling or discovered contraband as justification for the policy. According to the appeals court, the decision to conduct strip searches, rather than use a body scanning chair, was reasonable; the U.S. Supreme Court agreed. (Burleigh County Jail, Essex County Correctional Facility, New Jersey).

U.S. District Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Francis ex rel. Estate of Francis v. Northumberland County, 636 F.Supp.2d 368 (M.D.Pa. 2009). The administrator of the estate of a detainee who committed suicide while in a county prison brought an action against the county and prison officials, asserting claims for Fifth and Fourteenth Amendment reckless indifference and Eighth Amendment cruel and unusual punishment under § 1983. The administrator also alleged wrongful death under state law. The county defendants brought third-party claims against a psychiatrist who evaluated the detainee, and the psychiatrist counter-claimed. The county defendants and psychiatrist moved separately for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the evaluating psychiatrist knew the pretrial detainee was a suicide risk and failed to take necessary and available precautions to prevent the detainee's suicide as would show deliberate indifference to the detainee's medical needs; (2) whether the evaluating psychiatrist was an employee of the county prison entitled to immunity under the Pennsylvania Political Subdivision Tort Claim Act (PSTCA) or was an independent contractor excluded from such immunity; (3) whether the evaluating psychiatrist's failure to appropriately document the pretrial detainee's medical records led to the detainee's removal from a suicide watch; (4) whether the recordation of the pretrial detainee's suicide watch level was customary, precluding summary judgment as to whether the evaluating psychiatrist had a duty to record this information; (5) whether the evaluating psychiatrist's failure to communicate the appropriate suicide watch level to county prison officials resulted in the pretrial detainee's suicide; and (6) whether the evaluating psychiatrist communicated the appropriate suicide watch level for the pretrial detainee to county prison officials and whether the psychiatrist was required to record the watch level in the detainee's medical records. (Northumberland County Prison, Pennsylvania)

U.S. Appeals Court
DELAY
PROCEDURES

Harper v. Sheriff of Cook County, 581 F.3d 511 (7th Cir. 2009). A former detainee filed a class action against a sheriff, claiming that new detainees remanded to the sheriff's custody after a probable cause hearing were unconstitutionally required to undergo intake procedures at the county jail before release on bond. The district court certified the class and the sheriff appealed. The appeals court vacated and remanded. The court held that the former detainee's class action lacked a predominance of common issues, precluding certification of the class, where the detainee had not challenged any particular intake procedure. The court noted that the reasonableness of the delay between posting bond and release and the reasonableness of the time and manner of assigning identification numbers prior to release required individual determinations based on the length of delay for each detainee and the conditions and exigencies of the jail existing on that particular day. According to the court, resolution of an equal protection claim could be satisfied in an individual suit. The court noted that the detainee was not interested in a large damage award, and his constitutional claims required individualized liability and damages determinations that could be better litigated in an individual suit. (Sheriff of Cook County, Cook County Jail, Illinois)

U.S. District Court
SEARCHES

Miller v. Yamhill County, 620 F.Supp.2d 1241 (D.Or. 2009). Three inmates of a county correction facility brought a class action against a county and sheriff alleging their policy of strip searching inmates at the facility without reasonable suspicion that they were carrying contraband or weapons was a violation of the Fourth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that the sheriff supervising the deputies who conducted allegedly unconstitutional searches was not liable under § 1983, where the sheriff was not personally involved in any of the searches at issue, and there was no causal connection between any conduct of the sheriff and the alleged violations.

The court held that the strip search of an inmate at the facility, who was arrested for threatening someone with a knife and a cane, was reasonable upon the inmate's entry into the general jail population following his completion of a drug treatment program, in light of the underlying menacing charge. The court noted that the inmate was returning to the jail at the time of his choosing and therefore had knowledge that he would be entering the jail, and the inmate was returning from a drug treatment facility because of his possession and use of contraband.

According to the court, the strip search of another inmate at the facility, who had been arrested on charges of driving while suspended and the felony of attempt to elude, was reasonable, in light of one of the charges being a felony, and the fact that the inmate had eluded arrest earlier in the day, and therefore knew that the police were looking for him and that he would likely be entering the jail population. The court found that the strip search of a third inmate at the facility, who had been arrested on driving under the influence of intoxicants (DUII) charges, was reasonable, noting that after her arrest, the inmate managed to remove and conceal her handcuffs in her underwear, and after an extended search of the patrol car and booking area, and repeated denials that she had the handcuffs, the inmate removed the handcuffs from her pants, and deputy concluded that a strip search was necessary on the basis that inmate might be concealing other contraband. (Yamhill County Corrections Facility, Oregon)

U.S. Appeals Court
CLASSIFICATION

Moyle v. Anderson, 571 F.3d 814 (8th Cir. 2009). The son of an inmate murdered in a county jail, and the son's trustee, brought a § 1983 action against a county, seeking damages for the murder of the son's father based on the county's booking policy. The district court granted the county's motion for summary judgment and the son appealed. The appeals court affirmed. The court held that the county's booking policy, classifying an incoming inmate as high or low risk after an intake interview, and then housing those incoming inmates designated as high risk in a separate area of the jail, was not itself unconstitutional, so as to establish the county's municipal liability under § 1983 for the murder of an inmate killed by another inmate. The inmate who murdered the plaintiff's father had been transferred from a maximum security state prison and had previously attacked a fellow inmate. The policy vested discretion in

the booking officer to determine whether additional information about an inmate's criminal or incarceration history was necessary and whether the inmate posed a risk to others and needed to be placed in a separate unit. According to the court, there was no evidence that the county had notice of an alleged inadequacy in its booking policy, or that the policy's alleged inadequacy in failing to require officers to seek information about an incoming individual's history for violence prior to classification was so patently obvious that the county should have known that a constitutional violation was inevitable, as required to impose § 1983 liability on county, based on deliberate indifference.

The father was arrested for having no proof of auto insurance and was placed in a cell in the Alpha Intake Unit (AIU) after it was determined that he would be unable to go before a county judge that day. When the inmate who murdered the father arrived at the jail, he was booked by a county corrections officer under the booking policy at the time that required the officer to ask an arriving inmate several questions, to observe the inmate's demeanor, to review any additional information provided about the inmate, and then to classify the inmate as either high or low risk. Under the policy, if there was no information provided about the inmate's previous history, the policy did not require the officer to seek such information. Incoming inmates classified as low risk, including those transferred from other correctional facilities, were placed in the AIU for a 72 hour observation period, after which their classification was reviewed. If classified as high risk, inmates were placed in a separate housing unit. The booking officer was unaware that the prison inmate had been in segregation 23 hours a day at a high security prison, that he had a history of mental illness, and that the assault related to his court appearance had been an unprovoked, violent attack on a fellow inmate. The officer classified him as low risk, based on the information she had and the inmate's calm, polite demeanor during the booking process. (Sherburne County Jail, Minnesota)

U.S. District Court
SCREENING
SUICIDE

Powers-Bunce v. District of Columbia, 659 F.Supp.2d 173 (D.D.C. 2009). A mother, for herself and as the personal representative of an arrestee who hanged himself in a holding cell at a police precinct shortly after he was arrested by the United States Secret Service, brought an action against the District of Columbia and several police and Secret Service officers. The District of Columbia moved for judgment on the pleadings, or in the alternative, for summary judgment. The district court granted the motion. The court held that: (1) the District of Columbia did not violate the Fifth Amendment right of the arrestee to be free from deliberate indifference to his substantial risk of committing suicide; (2) the District of Columbia could not be held liable for a police officers' failure to attempt to revive the arrestee; and (3) the District of Columbia could not be held liable for officers' inadequate training and supervision. The court noted that although a Secret Service officer suspected the arrestee was under the influence of cocaine after he had observed his jittery behavior and discovered a half-used bag of cocaine on the arrestee during a search at the precinct, there was no evidence that cocaine-users were a greater suicide risk or that jittery behavior was a warning sign of impending suicide. According to the court, there was no evidence that police officers who accepted custody of the arrestee had subjective knowledge of his suicidal tendencies or actually drew the inference that the arrestee was a suicide risk, and there was no evidence that a Secret Service officer communicated either his suspicion of the arrestee's cocaine use or his observation of jittery behavior to either police officer. (District of Columbia Metropolitan Police Department, Third District Precinct)

U.S. District Court
CLOTHING
SEARCHES
SUICIDE

Reinhart v. City of Schenectady Police Dept., 599 F.Supp.2d 323 (N.D.N.Y. 2009). An arrestee brought a § 1983 action against a city, police department and officers, alleging Fourth Amendment violations following her arrest for allegedly making harassing telephone calls. The district court granted summary judgment for the defendants. The court held that probable cause existed to commence the criminal action and perform the arrest, and that the suspicionless seizure of the arrestee's brassiere while incarcerated qualified as a "special need" for Fourth Amendment purposes. The court noted that the police department had a policy of seizing brassieres purely as a safety measure to preclude their use as a suicide tool, and the policy was implemented in a manner reasonably designed to reduce intrusion on the arrestee's privacy by allowing her to remove the brassiere without disrobing. (Schenectady Police Department, New York)

U.S. Appeals Court
IDENTIFICATION

Schmidt v. City of Bella Villa, 557 F.3d 564 (8th Cir. 2009). An arrestee brought a § 1983 action against a police chief and city, alleging the chief's photographing of her tattoo violated her rights. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed. The court held that the chief's photographing of the arrestee's tattoo was not an unreasonable search and did not violate due process, and the photographing of the arrestee's tattoo did not amount to a strip search under Missouri strip search law. The court found that the action of photographing the tattoo did not violate the Fourth Amendment, despite the fact that the arrestee was required to unzip her pants for the photograph and that the photograph was taken by male officer. The court concluded that the photograph served legitimate law enforcement purposes, the chief told the arrestee that photograph was needed for identification purposes, and the photograph was taken in private. The court noted that the arrestee gave a false date of birth and social security number. She was arrested for making a false declaration and for being a minor in possession of alcohol. (City of Bella Villa, Missouri)

U.S. Appeals Court
MEDICAL SCREENING

Spears v. Ruth, 589 F.3d 249 (6th Cir. 2009). The estate of a deceased detainee brought a § 1983 action against a police officer and a city, alleging deliberate indifference to the detainee's serious illness or injury while in the officer's care. The district court denied summary judgment and the officer and city brought an appeal. The appeals court reversed and remanded. The court held that the pretrial detainee's condition and need for medical attention was not so obvious to the police officer as to establish the existence of a serious medical need, for the purposes of a claim of deliberate indifference in violation of due process. The officer allegedly failed to inform emergency medical technicians (EMT) on the scene and at the jail that the detainee, who later died from respiratory and cardiac failure resulting from cocaine use, had admitted that he smoked crack cocaine. According to the court, the EMTs and jail nurse, who presumably had a greater facility than the average layperson to recognize an individual's medical need, observed the detainee's behavior and administered tests based on those observations, and both the EMTs and the jail officers concluded that the detainee did not need to be transported to the hospital. After admission to the jail, the detainee continued to hallucinate and officers placed him in a restraint chair "for his own safety," tasing him to "relax his muscles." The detainee remained restrained for approximately three and a half hours, during which time he was calm but continued to hallucinate. Shortly after the officers released him from the chair, the detainee began to

shake and spit up blood and then became unconscious. He was taken to a hospital where he was diagnosed with respiratory and cardiac failure and multi-organ failure resulting from cocaine use. He lapsed into a coma and died eleven months later. (City of Cleveland, Bradley County Justice Center, Tennessee)

U.S. Appeals Court
MEDICAL SCREENING

Tamez v. Manthey, 589 F.3d 764 (5th Cir. 2009). Survivors of a pretrial detainee, who died while in custody from acute cocaine intoxication when the bag of cocaine that he swallowed before his arrest burst in his intestines, brought a § 1983 action, alleging that police officers and prison officials were deliberately indifferent to the detainee's need for medical care. The district court granted the summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed. The court held that police detectives were not deliberately indifferent to the medical needs of the detainee. The court noted that the detectives' knowledge that the detainee had pupils that were maximally dilated and that he needed medical clearance did not show that the detectives were aware of an unjustifiably high risk to the detainee's health, or that the risk to the detainee's health was so obvious that they should have inferred such a risk. According to the court, jailers were not deliberately indifferent to the medical needs of the detainee. According to the court, the fact that the jailers were told the detainee needed medical clearance and that he had dilated pupils did not show that the jailers knew or should have known of a substantial risk to the detainee's health. (Harlingen City Jail, Cameron County Carrizales-Rucker Detention Center, Texas)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 598 F.Supp.2d 115 (D.Me. 2009). After granting a detainee's motion for summary judgment on liability under § 1983 for a strip search she underwent at a county jail, the county moved to exclude the detainee's evidence of lost income or profits allegedly caused by her mental distress growing out of the strip search. The district court granted the motion in part and denied in part. The court held that the detainee's tardy pretrial disclosure of economic loss information did not prejudice the county's ability to investigate so as to warrant the exclusion of evidence of the detainee's evidence of lost income or profits. The court found that damages for economic loss based upon a lost future contract were not recoverable in the civil rights suit seeking damages allegedly caused by the detainee's mental distress, since the jury would have to speculate in order to determine whether the detainee suffered an economic loss on a future contract and, if so, how much. (Knox County Jail, Maine)

U.S. Appeals Court
MEDICAL SCREENING
PROCEDURES

Vaughn v. Gray, 557 F.3d 904 (8th Cir. 2009). A detainee's sister brought a § 1983 action against several officers and county employees alleging they were deliberately indifferent to the detainee's serious medical needs which resulted in his death. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court affirmed. The court held that a genuine issue of material fact existed as to whether jail officials deliberately disregarded the medical needs and condition of the detainee. The detainee was charged with first-degree sexual assault. During the jail's intake procedure, he completed a medical intake form, indicating that he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although the detainee had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. He received his medication for several days until the prescription ran out. He missed several doses before a new prescription arrived. During the time he was without medication, his cellmate told jail employees that the detainee had been ingesting shampoo and engaging in other odd behavior. The detainee was moved to an isolation cell to be monitored on an hourly basis. He was observed vomiting and asked to see a nurse but he was not provided access. He was later found dead in his cell. An autopsy determined that he died of natural causes: arteriosclerotic cardiovascular disease, causing a heart attack that resulted in his death. (Greene Co. Jail, Ark.)

U.S. District Court
IDENTIFICATION
PROCEDURES

Zargary v. The City of New York, 607 F.Supp.2d 609 (S.D.N.Y. 2009). A prisoner, who wore a headscarf as an Orthodox Jew, brought an action against a city, alleging that the city's practice or custom of removing head coverings from prisoners before taking photographs during admittance to a correctional facility violated her rights under the Free Exercise Clause of the First Amendment. The court entered judgment in favor of the city. The court held that the city correctional facility's practice or custom of removing head coverings from prisoners before taking photographs during their admittance to a facility was rationally related to the legitimate penological interest of being able to identify prisoners accurately to maintain security, and that the practice did not violate the Free Exercise Clause of the First Amendment. The court noted that the prisoner could dramatically change her appearance by removing the headscarf, making it more difficult to identify her, which would pose a security risk. According to the court, the prisoner had other means to express her religious beliefs in prison, the corrections officers attempted to accommodate the prisoner by minimizing the presence of male officers in the room when the photograph was taken, and the alternative of not removing the headscarf could not be said to pose only a de minimis security risk. (Rose M. Singer Correctional Facility, New York)

2010

U.S. Appeals Court
USE OF FORCE

Aldini v. Johnson, 609 F.3d 858 (6th Cir. 2010). A detainee brought a § 1983 excessive force case against four corrections officers, arising out of a beating which occurred while the detainee was being held in a booking room pending completion of the booking process, but after he had been surrendered to jailers by his arresting officer. The district court granted summary judgment to two of the officers based on qualified immunity. The detainee, and the officers whose motions for summary judgment were denied, appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that the district court's error, in not applying the Fourth Amendment reasonableness test to the officer whose actions the court found violated the higher Fourteenth Amendment due process "shocks-the-conscience" standard, was harmless. (Montgomery County Jail, Ohio)

U.S. District Court
STRIP SEARCHES
PLRA- Prison Litigation
Reform Act

Cantley v. West Virginia Regional Jail and Correctional Facility Authority, 728 F.Supp.2d 803 (S.D.W.Va. 2010). A pretrial detainee who was strip searched and deloused brought a class action against a regional jail authority, challenging its strip search and delousing policies. The jail authority moved to dismiss. The district court denied the motion. The court held that the detainee stated a claim in regard to the strip search policy and in regard to the delousing policy. The court found that a jail authority official sued in his individual capacity was not entitled to quali-

fied immunity. The detainee alleged that the jail had a blanket policy of conducting visual cavity strip searches of all pretrial detainees charged with misdemeanors or other minor crimes, regardless of whether the detainees were intermingled with the general population of the jail, and that there was no reasonable suspicion that he harbored weapons or contraband. The court ruled that whether the jail's delousing policy, which allegedly applied to all pretrial detainees, was reasonable under the Fourth Amendment could not be decided on a motion to dismiss. The court noted that the detainee who brought the action against a regional jail authority for alleged civil rights violations was not required to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA), where he was no longer an inmate at the time he filed suit. (W.V. Regional Jail and Corr'l Facility Authority, Western Regional Jail)

U.S. Appeals Court
SEARCHES

Florence v. Board of Chosen Freeholders of County of Burlington, 621 F.3d 296 (3rd Cir. 2010). *Affirmed* 132 S.Ct. 1510 (2012). A non-indictable arrestee brought a class action pursuant to § 1983 against two jails, alleging a strip search violated the Fourth Amendment. After granting the motion for class certification, the district court granted the arrestee's motion for summary judgment, denied his motion for a preliminary injunction and denied the jails' motions for qualified and Eleventh Amendment immunity. The jails appealed. The appeals court reversed and remanded. The appeals court held that as a matter of first impression in the circuit, the jails' policy of conducting strip searches of all arrestees upon their admission into the general prison population was reasonable. The court found that jails were not required to provide evidence of attempted smuggling or discovered contraband as justification for the strip search policy. According to the court, the decision to conduct strip searches, rather than use a body scanning chair, was reasonable. The court noted that the chair would not detect non-metallic contraband like drugs, and there was no evidence regarding the efficacy of the chair in detecting metallic objects. The appeals court decision was affirmed by the United States Supreme Court in 2012 (132 S.Ct. 1510). (Burlington County Jail, Essex County Correctional Facility, New Jersey)

U.S. Appeals Court
MEDICAL SCREENING

Gayton v. McCoy, 593 F.3d 610 (7th Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. The court held that a correctional facility nurse who examined the detainee during intake was not deliberately indifferent to his serious medical needs posed by her heart condition, as required to establish violation of the detainee's due process right to adequate medical care in the § 1983 action. The court noted that, even though the nurse failed to follow the facility's protocol requiring her to contact a doctor when an inmate complained of chest pains, the nurse placed the detainee on a list to have her vital signs checked each morning, and the nurse arranged for the detainee to get her congestive heart failure medication. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the nurse who examined the detainee following her complaints of nausea was deliberately indifferent to his serious medical needs posed by her heart condition and vomiting. In its decision, the court noted that "On the other hand, Nurse Pam Hibbert was presented with ample evidence that Taylor needed medical treatment." (Peoria Co. Jail, Ill.)

U.S. Appeals Court
PROCEDURES
USE OF FORCE

Griffin v. Hardrick, 604 F.3d 949 (6th Cir. 2010). A pretrial detainee brought an action against a county jail officer, alleging use of excessive force under § 1983 and state-law battery. The district court granted summary judgment in favor of the officer. The detainee appealed. The appeals court affirmed. The court held that a videotape of the incident between the detainee and a county jail officer was properly considered by the district court, in determining the officer's motion for summary judgment, where the detainee's version of events was blatantly contradicted by the videotape. The court found that the county jail officer's use of a leg-sweep maneuver to bring the pretrial detainee to the floor, which resulted in the detainee's leg being fractured, did not constitute wanton infliction of pain, and thus, the detainee could not prevail in her § 1983 Fourteenth Amendment excessive force claim against the officer. The court noted that it was undisputed that the detainee was acting in a manner, that she attempted to jerk away from the officer, and struggled with the officer when he attempted to lead her away. It was undisputed that the leg-sweep maneuver was in compliance with the jail's policies on the use of force. The leg fracture resulted from the accident of another officer collapsing on the detainee as they both fell to floor. (Davidson Co. Crim. Justice Center, Tennessee)

U.S. Appeals Court
MEDICAL SCREENING

Harper v. Lawrence County, Ala., 592 F.3d 1227 (11th Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. The court held that allegations that jailers were told by other inmates and other jail staff that the pretrial detainee was displaying erratic and strange behavior, and that jailers took no steps to secure immediate medical attention for the detainee, supported a § 1983 claim that jailers were deliberately indifferent to the detainee's serious medical needs under the due process clause. The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning a prior similar incident, satisfied the pleading standards for stating § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. District Court
SEARCHES

In re Nassau County Strip Search Cases, 742 F.Supp.2d 304 (E.D.N.Y. 2010). Arrestees brought a class action against a county, among others, challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. The defendants conceded liability, and following a non-jury trial on the issue of general damages, the district court held that each arrestee was entitled to the same dollar amount per new admit strip search by way of the general damages award, that it would exclude any information concerning the effect that the searches had upon arrestees in awarding general damages, and an award of \$500 in general damages to each arrestee was appropriate. (Nassau County, New York)

U.S. District Court
MEDICAL SCREENING
PSYCHOLOGICAL
SCREENING

Lum v. County of San Joaquin, 756 F.Supp.2d 1243 (E.D.Cal. 2010). An arrestee's survivors brought an action against a county, city, and several city and county employees, alleging § 1983 claims for various civil rights violations and a state law claim for wrongful death arising from the arrestee's accidental drowning after his release from the county jail. The defendants moved to dismiss portions of the complaint and the survivors moved for leave to amend. The district court granted the defendants' motion in part and denied in part, and granted the plaintiffs' motion. The survivors alleged that the city's police sergeants made a decision to arrest the individual for being under the influence in public, despite lack of evidence of alcohol use and knowledge that the individual was being medicated for bipolar disorder, and to book him on a "kickout" charge so that he would be released from jail six hours later. The court found that the arresting officers, by taking the arrestee into custody, created a special relationship with the arrestee, similar to the special relationship between a jailer and a prisoner, so as to create a duty of care for the purposes of wrongful death claim under California law, arising from the arrestee's accidental drowning following his release from the county jail. The court noted that it was foreseeable that the arrestee needed medical attention and that there was a risk posed by releasing him without providing such attention. The court held that the county, city, and arresting officers were entitled to immunity, under a California Tort Claims Act section related to liability of public entities and employees for the release of prisoners, for the wrongful death of the arrestee, only as to the basic decision to release the arrestee from the county jail, but not as to the defendants' ministerial acts after the initial decision to release the arrestee. The court noted that the arrestee had a lacerated foot, was covered with vomit and had trouble walking, and had a seizure while he was in a holding cell. The arrestee's body was found floating in the San Joaquin River, approximately two miles west of the county jail, shortly after he was released. (San Joaquin County Jail, California)

U.S. District Court
SEARCHES

McIlwain v. Weaver, 686 F.Supp.2d 894 (E.D.Ark. 2010). An arrestee brought a § 1983 action against a city, county, and law enforcement officers challenging his strip search. The defendants moved for summary judgment, and the arrestee moved for partial summary judgment. The district court granted the motions in part and denied in part. The court held that special circumstances justified the presence of a male sheriff's deputy during the strip search of the female arrestee who was being booked into jail, and thus, the male deputy's presence during the strip search did not violate the arrestee's Fourth Amendment rights. The court noted that the male deputy came to the cell in which the arrestee was being searched only after the arrestee began physically resisting the efforts of a female officer to perform the strip search, and the female officer called for help. The court found that summary judgment was precluded by genuine issues of material fact as to what the county policy or custom was with respect to strip searches of arrestees, and as to the adequacy of the county's training procedures for strip searches. (Sharp County Jail, Arkansas)

U.S. District Court
MEDICAL SCREENING
SUICIDE

Teague v. St. Charles County, 708 F.Supp.2d 935 (E.D.Mo. 2010). The mother of a detainee who committed suicide in a cell in county detention center brought an action against the county and corrections officials, asserting claims for wrongful death under § 1983 and under the Missouri Wrongful Death Statute. The county and the commanding officer moved to dismiss for failure to state a claim. The district court granted in the motion, in part. The court held that the mother failed to allege that the detention center's commanding officer personally participated. The court found that the mother's allegations that her son was demonstrating that he was under the influence of narcotics at the time of his detention, that her son had expressed suicidal tendencies, and that jail employees heard or were told of choking sounds coming from her son's cell but took no action, were sufficient to state a Fourteenth Amendment deliberate indifference claim under § 1983. The court held that the mother's allegation that the county unconstitutionally failed to train and supervise its employees with respect to custody of persons with symptoms of narcotics withdrawal and suicidal tendencies was sufficient to state a failure to train claim against the county, under § 1983, arising out of the death of her son who committed suicide while housed as a pretrial detainee. The detainee had used a bed sheet to hang himself and the mother alleged that the county failed to check him every 20 minutes, as required by jail policy. (St. Charles County Detention Center, Missouri)

U.S. District Court
ADA-Americans with
Disabilities Act
MEDICAL SCREENING
SUICIDE

Ulibarri v. City & County of Denver, 742 F.Supp.2d 1192 (D.Colo. 2010). Deaf detainees, and the estate of one detainee who committed suicide, brought a civil rights action challenging their arrests and detentions by the members of city and county's police and sheriff departments. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that failure to provide a deaf detainee with a sign language interpreter during the intake process did not constitute disability discrimination. The court found that jail deputies were not deliberately indifferent to a deaf detainee's needs. But the court held that summary judgment was precluded by genuine issues of material fact as to whether the deaf detainee had access to the jail's services after he was booked and placed in his housing assignment to the same extent as inmates who could communicate verbally, and whether the detainee could access the jail's services without assistance. The court held that jail deputies were not deliberately indifferent to needs of a deaf detainee who committed suicide, and because there was no underlying Eighth Amendment violation, supervisor defendants were not liable in either their official or individual capacities for the detainee's suicide, and the municipality was not liable for failure to adequately train and supervise the deputies. The court noted that no evidence indicated that the detainee had been suicidal prior to his incarceration or at the time of his medical screening, but rather, evidence established that the detainee could communicate through writing and otherwise sufficiently to at least alert medical staff that he needed assistance. The court noted that medical staff made regular and frequent visits to the jail. But the court also held that summary judgment was precluded by genuine issues of material fact existed as to whether the sheriff's department breached a duty to the detainee to take

reasonable care to prevent the detainee from committing suicide, and whether any such breach proximately caused the detainee's suicide. The court held that jail officials' late night release of the deaf detainee and the potential harm from being unable to communicate or get herself home did not demonstrate the level of outrageousness required to establish a substantive due process violation under a state-created danger theory. According to the court, the detainee failed to show that officers would have been aware of the risk that, instead of waiting in the facility for public transportation to begin, the detainee would leave and accept a ride from a stranger. The detainee was released at 2:00 a.m. and she was given bus tokens by a deputy sheriff. Her husband had called the facility to say that he was on his way to pick her up, but the message was not relayed to the detainee. There was a waiting area in the lobby of the facility but she did not notice it and attempted to get herself home on her own. (City and County of Denver Police and Sheriff Departments, Pre-arraignment Detention Facility, Denver County Jail, Colorado)

U.S. District Court
SUICIDE

Wells v. Bureau County, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor. The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

2011

U.S. District Court
SEARCHES

Augustin v. Jablonsky, 819 F.Supp.2d 153 (E.D.N.Y. 2011). Arrestees brought a class action against a county challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. After the county admitted liability, the plaintiffs' class action involving more than 17,000 members was certified for the issue of general damages and the district court awarded general damages of \$500 per strip search. The county moved to decertify the class for purposes of determining the issue of arrestees' special damages. The district court granted the motion. The court held that the resolution of special damages could not proceed on a class-wide basis, since questions of law or fact common to the class no longer predominated over questions affecting individuals. (Nassau County Correctional Center, New York)

U.S. District Court
SEARCHES

Bame v. Dillard, 637 F.3d 380 (D.C.Cir. 2011). Arrestees, who were arrested while protesting International Monetary Fund (IMF) and World Bank policies in the District of Columbia, brought a *Bivens* action against a former United States Marshal, alleging that they had been subjected to unconstitutional strip searches upon being processed into holding cells at a courthouse. The arrestees moved for summary judgment as to liability, and the Marshal moved for summary judgment on the issue of qualified immunity. The district court denied those motions. On appeal, the appeals court reversed and remanded. The court held that there was no clearly established constitutional prohibition of strip searching arrestees without individualized, reasonable suspicion. According to the court, strip searching of all male arrestee demonstrators or protestors engaged in civil disobedience, in a locality that had a persistent problem with contraband being smuggled into a cellblock, prior to their commingled placement in holding cells, without individualized, reasonable suspicion had not been prohibited by the Fourth Amendment at the time of the incident, and therefore the supervising United States Marshal was entitled to qualified immunity. (United States Marshal for the Superior Court of the District of Columbia)

U.S. District Court
DELAY

Barnes v. District of Columbia, 793 F.Supp.2d 260 (D.D.C. 2011). Inmates at local jails brought a putative class action, under § 1983, against the District of Columbia, alleging that their over-detentions violated their Fourth, Fifth and Eighth Amendments rights. Following certification of the over-detention class, the parties moved and cross-moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the District of Columbia's over-detention of jail inmates did not constitute a "seizure," precluding § 1983 claims alleging Fourth Amendment violations related to over-detentions stemming from the time it took to process inmates' court-ordered releases. The court noted that the inmates were already in custody at the time they were ordered released or their sentences expired, such that their freedom of movement had already been terminated, and there was no evidence that the plaintiffs' over-detentions involved fresh "seizures" warranting a Fourth Amendment analysis.

The court found that the District of Columbia's enforcement of a local ordinance with a "10 p.m. cut-off" rule, under which jail inmates were kept overnight if their court-ordered releases were not processed prior to 10 p.m., violated the inmates' substantive due process rights for purposes of a § 1983 action. According to the court, the enforcement of the rule resulted in over-detention of individuals who were entitled to release, such over-detentions were not the result of necessary administrative tasks or other reasonable delays, and the District could have promoted a claimed interest in inmate welfare while simultaneously respecting the entitlement of persons with court orders for release to prompt release. The court held that the District of Columbia violated the inmates' substantive due process rights, for the purposes of a § 1983 action, by over-detaining inmates and failing to release them by the end of the day on which they were entitled to release. According to the court, although processing of releases generally should have taken between two and two-and-a-half hours to complete, the average over-detention time for inmates was approximately 36 hours, even though the District was on notice, via another litigation involving over-detention, that prevailing release practices were deeply inadequate and that a fundamental change was required. The court found that a significant reduction in the number of over-detentions after the District of Columbia implemented measures to improve the manner in which inmate releases were processed demonstrated that the District was not deliberately indifferent to inmates' substantive due process rights, precluding the inmates' § 1983 action against the District. (District of Columbia Department of Corrections)

U.S. Appeals Court
CLASSIFICATION
PSYCHOLOGICAL
SCREENING

Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011). A jail inmate brought a § 1983 claim against deputies, alleging that he suffered sexual abuse by another inmate as the result of their deliberate indifference to his safety needs in violation of the Eighth Amendment. The district court denied the deputies' motion for summary judgment and the deputies appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' alleged failure to protect the inmate from sexual assault by another inmate was objectively serious. The court held that the deputy who processed the inmate through booking when he entered the jail and completed a referral form that scheduled the inmate for a mental health assessment did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs, noting that the deputy had no further contact with the inmate. The court also found that a deputy who ordinarily worked road patrol, and worked in the jail only on the day that the inmate reported that he had been sexually assaulted by another inmate, did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs in violation of the Eighth Amendment, where the deputy did not have sufficient contact with the inmate to permit the deputy to perceive his asserted status as a vulnerable inmate, or to observe his alleged altercations with the other inmate. The court held that summary judgment was precluded by genuine issues of material fact as to whether one deputy, who was familiar with the inmate who reported the alleged sexual assault as well as the inmate who allegedly assaulted him, knew of the risk to inmate's safety because of his status as a vulnerable inmate and the other inmate's status as a predatory inmate, and as to whether the deputy knew of the risk to the inmate's safety based on noise generated by the alleged assaults. (Macomb County Jail, Michigan)

U.S. District Court
SCREENING
PSYCHOLOGICAL
SCREENING

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception. According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assailing inmate's central file proximately caused his injury.

The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. Appeals Court
MEDICAL SCREENING
SUICIDE
RESTRAINTS

Coscia v. Town of Pembroke, Mass., 659 F.3d 37 (1st Cir. 2011). The estate of a detainee who committed suicide after being released from custody brought a § 1983 action against police officers, their supervisors, and a town, alleging that the officers and supervisors were deliberately indifferent to the arrestee's medical needs and that the town failed to train the officers to prevent detainee suicides. The district court denied the individual defendants' motion for judgment on the pleadings and they appealed. The appeals court reversed. The appeals court held that the estate failed to state a claim for deliberate indifference to a substantial risk of serious harm to health under the Fourteenth Amendment. According to the court, the estate failed to allege facts sufficient to demonstrate a causal relationship between the police officers' failure to furnish medical care to the detainee during a seven-hour period of custody and the detainee's act of committing suicide by walking in front of a train 14 hours after his release from custody. The court noted that the detainee had been thinking about suicide at the time he was arrested, the detainee was thinking about suicide at the time he was released from custody, and when the police released the detainee from custody they placed him in no worse position than that in which he would have been had they not acted at all. The court found that in the absence of a risk of harm created or intensified by a state action, there is no due process liability for harm suffered by a prior detainee after release from custody in circumstances that do not effectively

extend any state impediment to exercising self-help or to receiving whatever aid by others may normally be available. The twenty-one-year-old detainee had been involved in a one-car accident, he was arrested about eleven o'clock in the morning and brought to the police station. On the way there he said he intended to throw himself in front of a train, and he continued to utter suicide threats at the station house accompanied by self-destructive behavior, to the point of licking an electrical outlet. As a consequence, the police did not lock him in a cell, but placed him in leg restraints and followed an evaluation protocol that showed a high suicide risk. He was not examined by a doctor, but was released on his own recognizance about six o'clock that evening. (Town of Pembroke, Massachusetts)

U.S. Appeals Court
MEDICAL SCREENING

Craig v. Floyd County, Ga., 643 F.3d 1306 (11th Cir. 2011). A pretrial detainee who was admitted to a county jail after being cleared for admittance by a medical center to which he was transported following his arrest, brought a civil rights action against the county based on its nine-day delay in eventually providing him with surgical treatment for multiple fractures to his head. The district court granted the county's motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the pretrial detainee failed to show that a nine-day delay by medical personnel at the county jail in providing him with appropriate surgical treatment for multiple fractures to his skull was the result of any unconstitutional custom or policy of allegedly not referring detainees to physicians, of relying on hospital clearance forms instead of performing their own diagnostic tests on detainees transported to jail from a hospital, or of using the least costly means to treat detainees. The court noted that the detainee's only proof of any such policy or custom was that nine medical providers had evaluated him sixteen times at the county jail, before he was finally transported to a medical center when a tomography scan of his head revealed these fractures. According to the court, while nine different medical providers were involved in the detainee's treatment before a tomography was eventually ordered, this was insufficient to show that the county had a policy or custom of constitutional violations against detainees that was either persistent or so widespread as to have the force of law, as required to subject the county to liability under § 1983. (Floyd County Jail, Georgia)

U.S. Appeals Court
USE OF FORCE

Hicks v. Norwood, 640 F.3d 839 (8th Cir. 2011). An arrestee brought a § 1983 action against a detention center captain alleging use of excessive force, and against a lieutenant and sergeant for failing to prevent the use of excessive force. The district court dismissed the action and the arrestee appealed. The appeals court affirmed. The court held that the detention center captain's decision to use force, and the amount of force used in subduing the arrestee during the booking process were objectively reasonable under the circumstances, and he thus did not violate the arrestee's Fourth Amendment rights. The court noted that the arrestee refused to comply with directions, loudly abused correctional officers, and aggressively leapt toward the captain. (Ouachita County Jail, Arkansas)

U.S. District Court
PROCEDURES
SEARCH- PROPERTY

Morse v. Regents of University of California, Berkeley, 821 F.Supp.2d 1112 (N.D.Cal. 2011). A journalist arrested while covering a demonstration at a university sued the university's board of regents, its police department and various officers on the department, asserting § 1983 claims for violation of the First Amendment, the Fourth Amendment, and the Excessive Bail Clause of the Eighth Amendment, as well as a claim for violation of the Privacy Protection Act. The defendants filed a partial motion to dismiss. The district court granted the motion in part and denied in part. The court held that the journalist stated a § 1983 claim for violation of the Excessive Bail Clause of the Eighth Amendment on the theory that the defendants added unsupported charges for the sole purpose of increasing his bail. The court found that the theory was viable under the Excessive Bail Clause, despite the indirect means the defendants allegedly used to obtain the higher bail, and the intervening actions of the judicial officer who actually set bail. The court found that the journalist stated a § 1983 claim against the police chief in his individual capacity where the journalist asserted that the chief failed to train or supervise those individuals who directly deprived the journalist of his constitutional rights and that, by his policy decisions, he set in motion the acts that deprived the journalist of his constitutional rights. The court held that the journalist's claims that he was wrongfully arrested by university police and that his property was subject to searches and seizures without proper cause and without the proper warrants, stated a claim under the Privacy Protection Act (PPA) against the university police chief for failure to screen, train, and supervise. The court noted that the journalist's claim related specifically to the statutory provisions of the PPA, that he alleged sufficient facts to support his claim of a causal connection between the police chief's conduct and the statutory violation, and liability was not limited to those personally involved in the statutory violation. (University of California, Berkeley)

U.S. District Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Smith v. Atkins, 777 F.Supp.2d 955 (E.D.N.C. 2011). The mother of a schizophrenic inmate who committed suicide at a jail and the mother of the inmate's children brought a § 1983 action in state court against a county deputy sheriff, jail officials, a medical contractor, and a nurse employed by the contractor, alleging that the defendants violated the inmate's Eighth Amendment rights in failing to provide adequate medical care. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions. The court held that the deputy sheriff who happened to be at the jail delivering a prisoner when the inmate, who had been diagnosed with schizophrenia, committed suicide, did not know that the inmate was at a substantial risk of committing suicide or intentionally disregarded such risk. The court found that the deputy was not liable under § 1983 where the deputy did not know the inmate or anything about him, or have any responsibilities associated with the inmate's custody. The court also found that jail officials were not deliberately indifferent towards the schizophrenic inmate who was awaiting transfer to a state prison, as would violate the inmate's Eighth Amendment rights, because there was no indication that the officials subjectively knew that the inmate was at a substantial risk of committing suicide and intentionally disregarded that risk. According to the court, simply because the jail inmate, who was diagnosed with schizophrenia, had previously been on a suicide watch at the jail did not put jail officials on notice that he was suicidal during his subsequent incarceration two years later. The court held that jail officials' mere failure to comply with a state standard and a jail policy requiring a four-time per hour check on any prisoner who had ever been on a suicide watch did not violate the Eighth Amendment rights of the inmate. The court found that the mother of the inmate failed to show a direct causal link between a specific deficiency in training and an alleged Eighth Amendment violation, as required to sustain the mother's § 1983 Eighth Amendment claim against jail officials based on their alleged failure to train jail employees. (Bertie-Martin Regional Jail, North Carolina)

U.S. District Court
SEARCHES

Choquette v. City of New York, 839 F.Supp.2d 692 (S.D.N.Y. 2012). Female detainees filed § 1983 actions against a city and city officials alleging that the policy, practice, and custom of the city department of correction (DOC) of subjecting female detainees to a forced gynecological examination upon admission to DOC custody violated their constitutional rights. The detainees alleged that they were not informed of what the exam entailed and were subjected to, or threatened with, punishment if they questioned or refused the exam. The defendants moved to dismiss. The district court denied the motion. The court held that the statute of limitations for the detainees' claims was tolled until the gynecological exam class claims were dismissed from the class action challenging the DOC's alleged practice of conducting strip searches, where the potential gynecological exam class was pleaded in both the original complaint and the first amended intervenor complaint, and the settlement agreement did not provide unequivocal notice that the gynecological exam class claims were not being pursued. (New York City Dept. of Correction, Rose M. Singer Center, Rikers Island)

U.S. District Court
SCREENING
SUICIDE

Ferencz v. Medlock, 905 F.Supp.2d 656 (W.D.Pa. 2012). A mother, as administrator for her son's estate, brought deliberate indifference claims under a wrongful death statute against prison employees, and the prison's medical services provider, following the death of her son when he was a pretrial detainee in a county prison. The employees and provider moved to dismiss. The district court granted the motion in part and denied in part. The district court held that under Pennsylvania law, the mother lacked standing to bring wrongful death and survival actions in her individual capacity against several prison employees for her son's death while he was in prison, where the wrongful death and survival statutes only permitted recovery by a personal representative, such as a mother in her action as administratrix of her son's estate, or as a person entitled to recover damages as a trustee ad litem. The court found that the mother's claims that a prison's medical services provider had a policy, practice, or custom that resulted in her son's death were sufficient to overcome the provider's motion to dismiss the mother's § 1983 action for the death of her son while he was in prison. Upon admission to the facility, the detainee had been evaluated and scored a 12 on a scale, which was to have triggered classification as suicidal (a score of 8 or more). The Classification Committee subsequently did not classify the detainee as suicidal as they were required to do under the jail classification policy, and no member of the Committee communicated to medical contractor staff or correctional officers responsible for monitoring the detainee that he was suicidal and going through drug withdrawal. At the time, the jail was equipped with an operational and working video surveillance system and there was a video camera in the detainee's cell. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. Appeals Court
SCREENING
LENGTH

Handt v. Lynch, 681 F.3d 939 (8th Cir. 2012). A detainee, who suffered a month-long incarceration following sentencing for operating while intoxicated, even though a state court had not ordered his incarceration, brought a § 1983 action against prison intake officers and a counselor. The district court denied the officers' and counselor's motion for summary judgment on the basis of qualified immunity, and they appealed. The appeals court vacated and remanded. The appeals court held that the district court failed to engage in a full qualified immunity analysis as to each of the detainee's § 1983 claims, setting aside the district court's order denying summary judgment to the prison intake officers and counselor on qualified immunity grounds. The court noted that, although the district court did an admirable job of explaining the facts of the case and construing those facts in the light most favorable to the detainee, the court nevertheless repeatedly stated in its analysis that there were material issues of fact in dispute, and its decision lacked consideration of the individual defendants' actions with respect to each of the constitutional claims. (Iowa Medical Classification Center, Oakdale, Iowa)

U.S. District Court
MEDICATION
SEARCHES

Manning v. Sweitzer, 891 F.Supp.2d 961 (N.D.Ill. 2012). An arrestee brought an action against various village police officers and a village alleging unreasonable search and seizure of her vehicle, denial of the right to counsel, cruel and unusual punishment, conspiracy under § 1985, failure to train, unlawful detention, and several state law claims. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee's allegation that she was offered medication for her unnamed mental ailment while incarcerated, but that she declined to accept the medication "for fear of overmedication or a harmful interaction," failed to establish that she was subjected to inhumane conditions or that the police were deliberately indifferent to a serious medical need, as required to support her claim that she was subjected to cruel and unusual punishment in violation of the Eighth Amendment and the Due Process Clause. According to the court, the arrestee's failure to allege any other incidents of wrongdoing by the village, combined with her failure to show that the unconstitutional consequences of the village's alleged failure to train its police officers were patently obvious, precluded her claim against the village. (Village of Park Forest Police Department, Illinois)

U.S. Appeals Court
MEDICAL SCREENING

McCaster v. Clausen, 684 F.3d 740 (8th Cir. 2012). An inmate brought a § 1983 action against a jail superintendent, the jail nursing supervisor, five nurses he encountered while incarcerated, and a county, asserting that they had been deliberately indifferent to his serious medical need for treatment due to tuberculosis. The district court granted summary judgment on immunity grounds to the administrators and the county, but denied summary judgment to the nurses. The nurses appealed. The appeals court held that two nurses were entitled to qualified immunity from the inmate's action, but summary judgment was precluded by genuine issues of material fact for three of the nurses on the inmate's Eighth Amendment claim. The court held that although one nurse might have been negligent in failing to perceive of, or further investigate, the inmate's signs of illness in connection with tuberculosis, she did not deliberately disregard the inmate's need for medical treatment, and thus, she was entitled to qualified immunity from the inmate's § 1983 Eighth Amendment claims. The court noted that the nurse only met the inmate during his intake exam, she noted his elevated pulse, his weight loss and coughing, he did not complain of medical issues directly to her or on the screening form, and he played basketball within several days of his intake exam. The court found that a second nurse did not deliberately disregard the inmate's need for medical treatment arising from tuberculosis, and thus, she was entitled to qualified immunity. According to the court, the nurse's interaction with the inmate lasted two minutes and was confined to reading the result of his Mantoux test, and although the result was not read correctly, the error did not show indifference to the inmate's medical needs. The court held that summary judgment

was precluded by a genuine issue of material fact as to whether three nurses who knew from other inmates and correctional staff, of the inmate's medical needs due to tuberculosis, were deliberately indifferent to the inmate's medical needs in violation of the Eighth Amendment. The court noted that the inmate's condition worsened during his 56 day sentence for fifth degree assault, and he was transferred to a hospital emergency room two days before he was scheduled for release. (Ramsey County Correctional Facility, Minnesota)

U.S. Appeals Court
MEDICAL SCREENING
PSYCHOLOGICAL
SCREENING

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department.)

U.S. District Court
SEARCHES

Ratray v. Woodbury County, Iowa, 908 F.Supp.2d 976 (N.D.Iowa 2012). Misdemeanor arrestees brought a civil rights action against a county and law enforcement officials, alleging that their Fourth Amendment rights were violated when they were searched pursuant to a "blanket" policy authorizing strip searches of all arrestees facing serious misdemeanor or more serious charges. Following the grant of summary judgment, in part, in favor of the arrestees, the county moved for reconsideration. The court granted the motion, in part. The court held that the recent Supreme Court decision in *Florence*, which held that reasonable suspicion was generally not required to strip search pretrial detainees, subject to possible exceptions, was an intervening change in the law, justifying reconsideration. According to the court, the county's strip search policy was reasonable under the Fourth Amendment, regardless of whether arrestees would be put into the general population. But the court found that summary judgment was precluded on the arrestee's claim that the manner of a strip search was unreasonable. (Woodbury County Jail, Iowa)

U.S. District Court
ADA- Americans with
Disabilities Act
MEDICATION

Woods v. City of Utica, 902 F.Supp.2d 273 (N.D.N.Y. 2012). A wheelchair-using, paraplegic arrestee sued a city, police officer, a county, a former sheriff, and county corrections officers, bringing federal causes of action for violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Fourteenth Amendment equal protection and due process. The arrestee alleged that he was lifted out of his wheelchair and placed on the floor of a sheriff's van, forcing him to maneuver himself onto a bench seat which caused his pants and underwear to fall, exposing his genitals, that he was not secured to the bench with a seatbelt, causing him to be thrown about the passenger compartment and suffer leg spasms during his ride to the jail, that he was forced to urinate into an empty soda bottle and handle his sterile catheter with his hands that were dirty from moving himself around the floor of the van, and that the county corrections officers stood by as he struggled to maneuver himself out of the van and into his wheelchair while other inmates watched. The city and county defendants moved for summary judgment. The district court held that: (1) the city did not fail to accommodate the arrestee's disability, for purposes of the ADA and Rehabilitation Act claims; (2) summary judgment was precluded by fact issues as to whether the arrestee was denied the benefit of safe and appropriate transportation by the county on the day of his arrest when he was moved from a police station to a county jail; (3) the county was entitled to summary judgment to the extent the arrestee's claims involved his transportation from the jail to court proceedings on two other dates; (4) fact issues existed as to whether the county defendants were deliberately indifferent to the paraplegic inmate's known medical need for suppositories every other day, in violation of due process, but they were not deliberately indifferent to his need for catheters and prescription pain medication; and (5) the county defendants were not entitled to qualified immunity. The court noted that while the county defendants disputed the arrestee's version of the facts, corrections officers all denied receiving any training regarding how to transport disabled inmates. (Utica Police Department, Oneida County Correctional Facility, New York)

U.S. Appeals Court
 CLASSIFICATION
 MEDICAL SCREENING
 PSYCHOLOGICAL
 SCREENING
 SUICIDE

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment-- namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish.

The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal.

According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. Appeals Court
 MEDICAL SCREENING

Burgess v. Fischer, 735 F.3d 462 (6th Cir. 2013). An arrestee brought an action under § 1983 against a county board of commissioners, sheriff, deputies, and jail nurse, alleging violations of his constitutional rights during his arrest. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The appeals court held that: (1) a genuine issue of material fact existed as to whether the force used against the arrestee was reasonable; (2) a corrections officer and the jail nurse were not liable for failure to prevent deputy sheriffs from using excessive force, absent a showing that the nurse and officer had both the opportunity and the means to prevent the harm from occurring; (3) the nurse was not liable for deliberate indifference to the arrestee's medical needs, where the arrestee's latent cranial injury was not so obvious that a lay person would easily have recognized the necessity for a doctor's attention; (4) the county board of commissioners was not liable under § 1983 for any alleged conduct of deputy sheriffs in violating the arrestee's federal constitutional rights, absent a showing that any county policy or custom was the moving force behind the alleged violations; (5) a genuine issue of material fact existed as to whether a deputy sheriffs' use of force against the arrestee was reckless under Ohio law; (6) a genuine issue of material fact existed as to whether a deputy sheriff assaulted the arrestee in response to an off-color jibe; and (7) genuine issues of material fact existed as to whether the county board of commissioners, sheriff, and deputies knew that litigation was probable and whether their destruction of videotape evidence of deputies' use of force against the arrestee was willful. The court also found that the jail nurse did not act with malice and in a wanton and willful manner in allowing the arrestee to sit in a county jail cell for 12 hours with serious injuries, where the nurse attended to the arrestee, assessed what she perceived to be minor injuries, provided him with ibuprofen for his pain, and advised him he could contact someone for further medical assistance if necessary. (Greene County Jail, Ohio)

U.S. District Court
 CLOTHING
 SEARCHES
 TELEPHONE
 USE OF FORCE

Clay v. Woodbury County, Iowa, 982 F.Supp.2d 904 (N.D.Iowa 2013). A female arrestee brought a § 1983 action against a city, an arresting officer, county, county sheriff, and jail officers, alleging, among other things, that jail officers "strip searched" her without reasonable suspicion and in unconstitutional manner, and did so in retaliation for her vociferous complaints about her detention and the search of her purse and cell phone. The defendants moved for summary judgment, and the arrestee moved to exclude expert testimony. The district court held that the expert's reference to an incorrect standard for the excessive force claim did not warrant excluding his opinions in their entirety, although portions of the expert's report were inadmissible.

The court found that the incident in which male and female county jail officers forcibly removed the female arrestee's under-wire bra and changed her into jail attire was not a "strip search" within the meaning of the Iowa law which defined a "strip search" as "having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, female breasts or undergarments of that person or a physical probe by any body cavity," where there was no indication that the officers inspected the arrestee's private parts or physically probed any of her body cavities. The court also found that the arrestee whose clothing was forcibly removed in the presence of male and female county jail officers in a holding cell after the arrestee refused to answer questions during the booking process and to remove her clothing herself, was not subjected to a "strip search" requiring reasonable suspicion under the Fourth Amendment. According to the court, the officers did not violate the arrestee's privacy rights under the Fourth Amendment where the officers' reason for removing the arrestee's bra-- institutional safety-- was substantially justified, and the scope of the intrusion was relatively small. The court also found that the officers were entitled to qualified immunity from the female arrestee's § 1983 unlawful search claim, where the officers neither knew, nor reasonably should have known, that their actions would violate the arrestee's privacy rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the amount of force used by female county jail officers during the booking process to forcibly remove the female arrestee's under-wire bra and change her into jail attire after the arrestee refused to answer questions, became

disruptive, and refused to remove her clothing herself, was reasonable. The officers allegedly threw the arrestee onto the cell bunk, causing her to bang her head against the bunk or cell wall. The court found that male county jail officers did not use excessive force, within the meaning of the Fourth Amendment, in restraining the female arrestee in a holding cell after the female officers had allegedly thrown the arrestee onto a cell bunk, causing her to bang her head against bunk or cell wall, in an effort to forcibly remove the arrestee's clothing and to change her into jail attire. (Woodbury County Jail, Iowa)

U.S. District Court
USE OF FORCE

Davis v. Pickell, 939 F.Supp.2d 771 (E.D.Mich. 2013). A pretrial detainee brought a § 1983 action against a sheriff, undersheriff, and deputies, alleging various claims, including excessive force. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee had been booked into a holding cell at the jail and then he was removed from the multi-prisoner cell and taken to a single-inmate "safety cell." He alleges that during the transfer, deputy sheriffs subjected him to excessive force in the course of removing his jacket and shoes. The district court found that "[T]he videotape provides substance to those allegations." The court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' use of force against the detainee shocked the conscience, whether the deputies maliciously used force, and whether the use of force on the detainee was outrageous conduct. (Genesee County Jail, Michigan)

U.S. District Court
CLASSIFICATION
SEARCHES

Haas v. Burlington County, 955 F.Supp.2d 334 (D.N.J. 2013). Arrestees filed a proposed class action under § 1983 alleging that their constitutional rights were violated when they were strip searched at a county jail. The district court granted the arrestees' motion for leave to file an amended complaint, and the county appealed. The district court affirmed in part and reversed in part. The court held that the arrestees' proposed amendment to their complaint, in which they alleged that they were arrested for minor offenses, that they either were held, or could have been held, outside of the general jail population, and that they were subjected to strip searches pursuant to the county's blanket policy before their detentions had been reviewed by a judicial officer, stated plausible claims for violation of their rights under Fourth and Fourteenth Amendments. (Burlington County Jail, New Jersey)

U.S. District Court
PSYCHOLOGICAL
SCREENING
SUICIDE

Holscher v. Mille Lacs County, 924 F.Supp.2d 1044 (D.Minn. 2013). Trustees for the next-of-kin of a pretrial detainee who committed suicide while incarcerated at a county jail brought an action against the county, alleging under § 1983 that the county provided inadequate medical care to the detainee, in violation of his due process rights. The trustees also asserted related claims for negligence and wrongful death under state law. The county moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the county had actual knowledge of the pretrial detainee's risk of suicide, as to whether the county was deliberately indifferent to that risk, and as to whether the detainee's death was the result of an unconstitutional custom. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the county's training of its jail employees on proper implementation of its suicide prevention policy was adequate, as to whether the county was deliberately indifferent in failing to revise its training, and as to whether any inadequate training on the part of the county caused the pretrial detainee's suicide. (Mille Lacs County Jail, Wisconsin)

U.S. District Court
SEARCHES

In re Nassau County Strip Search Cases, 958 F.Supp.2d 339 (E.D.N.Y. 2013). Arrestees brought a class action against county officials and others, challenging a county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. The defendants moved for reconsideration and to vacate a prior order granting summary judgment in favor of the arrestees on the liability issue. The district court granted the motion in part and denied the motion in part. The court held that: (1) the defendants' concession of liability did not, in and of itself, divest the court of discretion to reconsider its prior order granting summary judgment in favor of the arrestees on the issue of liability; (2) the *Florence v. Board of Chosen Freeholders* decision was an intervening change in the controlling federal law, justifying the district court's reconsideration of a prior order granting summary judgment in favor of the arrestees on their federal claim; and (3) the *Florence* decision did not justify reconsideration of a prior grant of summary judgment on the New York state constitutional claim. (Nassau County Corr'l. Center, New York)

U.S. District Court
MEDICAL SCREENING
PROCEDURES

Lucia v. City of Peabody, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. District Court
IDENTIFICATION
SEARCHES

Shaw v. District of Columbia, 944 F.Supp.2d 43 (D.D.C. 2013). A former pretrial detainee, a transgender woman, who underwent sex reassignment surgery and had her sex legally changed to female, brought an action against the United States Marshals Service (USMS), USMS marshals, District of Columbia, a police chief, and police officers, alleging under § 1983 that the defendants violated her Fourth Amendment rights in connection with her arrests, and asserting claims under the District of Columbia Human Rights Act and tort law. The police chief, officer, and USMS

defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the USMS marshals were not entitled to qualified immunity from the unlawful search claim, where a reasonable officer would have known that a cross-gender search of a female detainee by male USMS employees that included intimate physical contact, exposure of private body parts, and verbal harassment, all in front of male detainees and male USMS employees, in the absence of an emergency, was unreasonable. The court also found that the USMS marshals and the police officer were not entitled to qualified immunity from a § 1983 Fifth Amendment conditions of confinement claim brought by the pretrial detainee, arising from the defendants' actions in holding the detainee with male detainees and otherwise treating her as if she were male. According to the court, a reasonable officer would know that treating the female detainee as the detainee was treated exposed her to a substantial risk of serious harm, and, therefore, would know that those actions violated the detainee's due process rights. (District of Columbia Metropolitan Police Dept., 6th District Police Station and MPD's Central Cellblock, and U.S.Marshals Service)

U.S. Appeals Court
CLASSIFICATION

Smith v. Sangamon County Sheriff's Dept., 715 F.3d 188 (7th Cir. 2013). A pretrial detainee filed suit under § 1983 against a sheriff's department to recover for injuries sustained when he was severely beaten by another inmate housed in a maximum-security cellblock. The district court entered summary judgment for the sheriff's department, and the detainee appealed. The appeals court affirmed. The court held that the detainee failed to establish that the security classification policy used by the sheriff's department to assign inmates to cellblocks within the jail was deliberately indifferent to inmate safety in violation of his due-process rights. The court noted that: (1) the detainee presented no evidence that the classification policy created a serious risk of physical harm to inmates, much less that the sheriff's department knew of it and did nothing; (2) the attack by the detainee's cellmate was not enough to establish that the policy itself systematically exposed inmates like the detainee to a serious risk of harm; and (3) it was unclear that a policy strictly segregating those accused of nonviolent crimes from those accused of violent crimes would do a better job of ensuring inmate safety than the multiple-factor classification system used by the sheriff's department. The detainee claimed that the Department's approach to classifying inmates for cellblock placement ignored serious risks to inmate safety because the security classification policy fails to separate "violent" from "nonviolent" inmates and thus fails to protect peaceful inmates from attacks by inmates with assaultive tendencies. The appeals court described the classification practices: "A classification officer interviews each new detainee and reviews a range of information, including the inmate's age, gender, gang affiliation, medical concerns, current charge, criminal history, behavioral and disciplinary history within the jail, and any holds due to parole violations. Pursuant to standards recommended by the American Correctional Association, the classification policy assigns point values within these categories, with higher point values corresponding to lower security risks." (Sangamon County Detention Facility, Illinois)

U.S. District Court
ADA-Americans with
Disabilities Act
PROCEDURES
TRANSLATOR

Taylor v. City of Mason, 970 F.Supp.2d 776 (S.D.Ohio 2013). A deaf arrestee brought an action against a police department and a city, alleging that denial of a qualified interpreter during questioning prior to arrest at the jail violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and that he was falsely imprisoned. The defendants moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the deaf arrestee's allegations, that police officers denied him the benefits of effectively communicating with them prior to arrest by failing to provide an appropriate auxiliary aid, were sufficient to state a claim under ADA and Rehabilitation Act. The arrestee alleged that he initiated a phone call to police because he had been assaulted, and that, although officers requested an American Sign Language (ASL) interpreter, they did not wait for the interpreter to arrive before they began questioning him, but instead used his alleged attacker as an interpreter, and she reported that the arrestee sexually assaulted her. The court found that the allegations were also sufficient to state a claim under the Rehabilitation Act, where the arrestee alleged that he expressed dissatisfaction with the interpreter provided at the jail, who was not certified in ASL, that he did not fully understand his Miranda rights as explained by the interpreter, and that the lack of a qualified interpreter was directed at him particularly. (City of Mason Police Department and Jail, Ohio)

U.S. Appeals Court
MEDICAL SCREENING

Thompson v. King, 730 F.3d 742 (8th Cir. 2013). The estate of a detainee, who died in police custody from multiple drug intoxication, brought a § 1983 action against the arresting and detaining officers, alleging that the officers had shown deliberate indifference to the detainee's serious medical needs. The district court denied the officers' motion for summary judgment on the basis of qualified immunity. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the arresting officer's discovery of an empty bottle of a recently refilled anti-anxiety medication, and the detainee's statement that he had taken "a little" of the medication, did not amount to subjective knowledge that the detainee required medical attention, and thus the officer was entitled to qualified immunity in the § 1983 action arising from the subsequent death of the detainee in police custody. The court noted that the detainee presented no external injuries, and the detainee was conscious during the initial encounter, answering officers' questions and following instructions. The court found that summary judgment for the police officer in charge of the jail was precluded by a genuine issue of material fact as to whether the police officer had subjective knowledge of the serious medical need of the detainee and whether the officer deliberately disregarded that need. According to the court, a reasonable officer in charge of a jail would have known that a constitutional violation occurs by deliberately disregarding a detainee's serious medical needs, and thus the right was clearly established, and in turn the officer was not entitled to qualified immunity from the § 1983 claim arising from detainee's death while in police custody. (Saline County Detention Center, Arkansas)

U.S. District Court
RESTRAINTS
USE OF FORCE

Valade v. City of New York, 949 F.Supp.2d 519 (S.D.N.Y. 2013). Arrestees brought § 1983 and state law actions against police officers and a city. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment on the Fourth Amendment excessive force claim was precluded by genuine issues of material fact as to whether a police officer used excessive force against the arrestee by handcuffing her too tightly and shoving her into a police car. The court also found a genuine issue of material fact as to whether the arrestee was sexually assaulted while she was in police custody following her arrest. (New York City Police Department, Central Booking)

U.S. District Court
SEARCHES

Benjamin v. Fassnacht, 39 F.Supp.3d 635 (E.D.Pa. 2014). The parents of a juvenile, who was arrested and charged with summary offenses and committed to a youth detention facility after he threatened several girls in his neighborhood, brought an action on his behalf against state troopers, a county, and county officials, asserting claims under § 1983 and state law. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that: (1) county officials did not have the right to conduct blanket strip searches of juveniles upon admission to detention facility; (2) detention facility officials who strip searched the juvenile were not entitled to summary judgment on the unreasonable search claims; (3) county officials were not entitled to qualified immunity from the unreasonable search claims; and (4) the county was not entitled to summary judgment on the unreasonable search claims. The court found that summary judgment of the Fourth Amendment claims were precluded by fact issues as to whether the county and the facility's director had a policy, practice, or custom of conducting blanket strip searches and acted with deliberate indifference to the rights of the juveniles being detained at the facility. (Lancaster County Youth Detention Center, Pennsylvania)

U.S. Appeals Court
CHEMICAL AGENTS
SEARCHES

Cantley v. West Virginia Regional Jail and Correctional Facility Authority, 771 F.3d 201 (4th Cir. 2014). Two arrestees brought a § 1983 action for damages and declaratory and injunctive relief against a regional jail authority and three of its former or current executive directors, challenging the constitutionality of visual strip searches and delousing of the arrestees. The district court granted summary judgment to the defendants. An arrestee appealed. The appeals court affirmed. The court held that: (1) the post-arraignment visual strip search of one arrestee did not violate the Fourth Amendment; (2) the pre-arraignment visual strip search of the other arrestee did not violate a clearly established right where the arrestee was strip-searched in a private room, and he was to be held until the next morning in a holding cell where he might interact with up to 15 other arrestees; (3) delousing of the arrestees did not violate a clearly established right; and (4) declaratory and injunctive relief would be premature. The court noted that the delousing was done in a private room with only one officer, who was of the same sex as the arrestees, and it did not entail the officer himself touching either arrestee. (West Virginia Regional Jail and Correctional Facility Authority)

U.S. District Court
SCREENING
PROCEDURES

Chavez v. County of Bernalillo, 3 F.Supp.3d 936 (D.N.M. 2014). An arrestee brought § 1983 claims and state-law claims against a county and its jail director, relating to the arrestee's detention pursuant to a bench warrant that had been cancelled before the arrest. After removal to federal court, the defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part, and remanded to the state court. The court held that the arrestee's § 1983 claims against a county and its jail director, relating to detention pursuant to a bench warrant that had been cancelled before the arrest, were properly characterized as Fourth Amendment claims for false arrest and false imprisonment, rather than for malicious prosecution. The court found that county jail employees did not violate the plaintiff's Fourth Amendment right to be free from unlawful seizure, when they booked him into the jail following a city police officer's arrest of the plaintiff pursuant to a bench warrant that was facially valid, but that had been cancelled before the arrest. According to the court, county jail employees, upon learning from the arrestee's attorney about the pre-arrest cancellation of the facially valid bench warrant pursuant to which city police officers had conducted the arrest, did not act with deliberate or reckless intent to falsely imprison the arrestee by requiring a release order from a judge, and thus, the arrestee's continued detention for two days, until the release order was issued, did not constitute false imprisonment in violation of the Fourth Amendment. The court noted that jail employees acted reasonably, since a judge could better determine why a bench warrant remained available to city police at the time of arrest, and whether any other basis for detaining the arrestee existed. (Metropolitan Detention Center, Bernalillo County, New Mexico)

U.S. Appeals Court
MEDICAL SCREENING
MEDICATION

Fourte v. Faulkner County, Ark., 746 F.3d 384 (8th Cir. 2014). A pretrial detainee sued a county and jail officials for alleged deliberate indifference to his serious medical needs, after he became legally blind allegedly due to his high blood pressure while incarcerated. The district court denied the defendants summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the lack of medical screening at intake, failure to prescribe medication, and a delay in administering medication were not deliberate indifference. The court held that the officials' failure to conduct medical screening of the detainee at intake did not constitute deliberate indifference to his serious medical needs, where the officials began logging the detainee's daily blood pressure in response to his complaints of heart problems. The court found that the officials' failure to prescribe medication for the detainee after several high blood pressure readings did not constitute deliberate indifference to his serious medical needs. The court noted that although the officials at most should have known they were committing malpractice by not prescribing medication, medical malpractice was not deliberate indifference. According to the court, the officials' delay in administering blood pressure medication to the detainee by failing to write a second prescription sooner, after the medication did not arrive following first prescription, did not constitute deliberate indifference to his serious medical needs, where the officials at most were negligent, and deliberate indifference required even more than gross negligence. (Faulkner County Jail, Arkansas)

U.S. District Court
MEDICAL SCREENING
MEDICATION

Hinojosa v. Livingston, 994 F.Supp.2d 840 (S.D.Tex. 2014). The mother of a former inmate who died of hyperthermia while incarcerated brought an action against the prison's health care provider, asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging the provider's failure to make accommodations for the inmate's disabilities resulted in the inmate's death. The provider moved to dismiss. The district court denied the motion. The court held that the mother alleged sufficient facts to state that the inmate was discriminated against by the prison's health care provider, in support of her claims under the ADA and the Rehabilitation Act, by alleging that the provider knew of the risks and dangers associated with certain medical conditions and medications, that the provider knew the inmate suffered from those conditions and used those medications, and that despite that knowledge, the provider failed to make reasonable accommodations, resulting in the inmate suffering more pain and punishment than non-disabled prisoners, namely, his death. The court noted that

the mother alleged that the provider knew both that the inmate suffered from hypertension, diabetes, schizophrenia, and/or depression, and was prescribed medications to treat his disabilities, and that extreme temperatures could be deadly, but still failed to protect the inmate from the extreme temperatures that ultimately resulted in the inmate's death.

The court found that the mother alleged sufficient facts concerning the accommodations that should have been provided by the prison's health care provider without a request, but were denied or refused, as well as which facilities, programs, or services should have been modified by the provider, to state claims under the ADA and the Rehabilitation Act. The mother complained that the provider's intake process was flawed in that it could take up to 10 days for prisoners to receive an intake physical, and that the delay created a loophole that left inmates with heat sensitive conditions and disabilities especially vulnerable to death because they did not receive accommodations for their heat sensitive disabilities, and that the provider's failure to employ 24-hour medical staff at the prison resulted in a fatal delay and denial of vital medical care to the inmate. (University of Texas Medical Branch, Texas Department of Criminal Justice Garza West Unit)

U.S. District Court
SEARCHES

In re Nassau County Strip Search Cases, 12 F.Supp.3d 485 (E.D.N.Y. 2014). Arrestees brought a class action against county officials and others, challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. Following a bench trial, the district court awarded general damages of \$500 per strip search for the 17,000 persons who comprised the class. Subsequently, the arrestees moved for attorney fees in the amount of \$5,754,000 plus costs and expenses of \$182,030. The court held that it would apply the current, unadjusted hourly rates charged by the various attorneys in determining counsel fees using the lodestar method as a cross-check against the percentage method. The court found that the lodestar rates were \$300 for all associates, with two exceptions for requested rates below \$300, and \$450 for all partners. The court awarded \$3,836,000 in counsel fees, which was equivalent to 33 1/3 % of the total amount recovered on behalf of the class, and \$182,030.25 in costs and expenses. (Nassau County Correctional Center, New York)

U.S. Appeals Court
MEDICAL SCREENING

Keller v. U.S., 771 F.3d 1021 (7th Cir. 2014). A federal inmate brought an action under the Federal Tort Claims Act (FTCA), alleging that federal prison employees negligently failed to protect him from being attacked by another inmate. The government moved for summary judgment. The district court granted the motion and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison intake psychologist failed to comply with mandatory regulations by not examining all of the inmate's medical records before releasing the inmate into the general prison population, and whether prison guards violated post orders by failing to attentively monitor their assigned areas of the prison yard. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
MEDICAL SCREENING
USE OF FORCE

M.H. v. County of Alameda, 62 F.Supp.3d 1049 (N.D.Cal. 2014). A pretrial detainee's estate brought a civil rights action against a county, its sheriff, sheriff's deputies, and a correctional healthcare provider, alleging violations of § 1983 as well as common law claims for negligence, assault, and battery after the detainee died from alcohol withdrawal. The defendants moved for summary judgment. The district court held that summary judgment was precluded by fact issues: (1) with regard to the nurse who performed the detainee's medical intake assessment to determine, if she was subjectively aware of his risk of alcohol withdrawal but did nothing prior to his death; (2) as to whether the county adequately implemented its training policies concerning recognition of inmates with alcohol and other drug problems; (3) with regard to the healthcare provider for failure to supervise the nurse who performed the detainee's medical intake assessment and for failure to follow its own policies; and (4) as to whether a deputy was justified in using a stun gun against the detainee while moving him to an isolation cell and in delivering closed-fist strikes to the detainee's back after a struggle ensued. The court also found a fact issue with regard to whether a social worker was subjectively reckless when she chose to see other inmates despite knowing that the pretrial detainee was at risk for severe alcohol withdrawal. The detainee had been arrested for jaywalking. (Alameda County, Glenn Dyer Detention Facility, California)

U.S. District Court
PROCEDURES

Robinson v. Keita, 20 F.Supp.3d 1140 (D.Colo. 2014). An arrestee brought an action against a city, city police officers, a county, and sheriff's deputies, alleging under § 1983 that he was unreasonably arrested and incarcerated for a 12-day period. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) a front desk officer was entitled to qualified immunity from unlawful arrest claim; (2) the deputies who transported the arrestee from a police station across the street to a detention facility, and assisted in the arrestee's booking, were entitled to qualified immunity from a substantive due process claim; (3) there was no evidence that the city's alleged policy of relying on the state court to schedule a hearing after promptly being advised of a warrant arrest was substantially certain to result in a constitutional violation; but (4) summary judgment was precluded by fact issues as to whether the city had actual or constructive notice that its failure to train as to how to process conflicting information during the process of "packing" an arrest warrant for distribution was substantially certain to result in a constitutional violation, and as to whether the city substantially chose to disregard the risk of harm. (City and County of Denver, Colorado)

U.S. District Court
SUICIDE
SCREENING

Rogge v. City of Richmond, Tex., 995 F.Supp.2d 657 (S.D.Tex. 2014). The parents of an arrestee who committed suicide while in police custody brought a § 1983 and state law action in state court against the city and two police officers. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motion. The court held that the arresting police officer was unaware of the arrestee's risk of self harm. The arrestee committed suicide in a police station holding cell, and thus, by not checking on the arrestee for several hours, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The court noted that the arrestee was calm and that he cooperated with the officer during their interaction, and although he said he was terminated from his job, admitted drinking, and said he was on medication for anxiety, he did not express an interest in hurting himself or appear distraught. The message that the officer received from the arrestee's father did not raise suspicion of a risk of suicide, and the officer believed

that all dangerous personal items had been taken from the arrestee and that the dispatch officer would monitor him via a video feed.

The court found that the police dispatch officer who was monitoring the video feed from the police station holding cell was unaware of the arrestee's risk of self harm, and thus, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The arrestee slept on bench in the cell for most of the two and a half hours he was in the cell before hanging himself, and the officer did not observe on the video monitor any behavior on the arrestee's part that suggested he was a suicide risk. The officer observed that the arrestee did not have items of personal property considered to be suicide implements, and although the arrestee's father came to the station and told the officer that he and his wife were worried, he did not indicate the arrestee might be suicidal. (Richmond City Jail, Texas)

U.S. Appeals Court
IDENTIFICATION

S.L. ex rel. K.L. v. Pierce Tp. Bd. of Trustees, 771 F.3d 956 (6th Cir. 2014). A juvenile, by and through his guardian, filed a § 1983 action against a township, its police chief, a police officer, the superintendent of a juvenile detention center, and the center's intake officer, alleging false arrest, false imprisonment, malicious prosecution, and loss of filial consortium. The defendants moved for summary judgment. The district court denied the motion. The defendants appealed. The appeals court affirmed, and on remand the district court entered summary judgment in favor of the superintendent and the intake officer, and the plaintiffs appealed. The appeals court affirmed. The court held that the intake officer at the juvenile detention center had no duty to make an independent assessment of probable cause for the juvenile detainee's arrest and detention, and thus did not violate the detainee's Fourth Amendment rights by signing a complaint prepared by the arresting officer that charged the detainee as a delinquent child. (Clermont County Juvenile Detention Center, Ohio)

U.S. Appeals Court
SEARCHES

T.S. v. Doe, 742 F.3d 632 (6th Cir. 2014). Parents, on behalf of their minor children, brought a § 1983 action against the superintendent of a juvenile detention center, correctional officers, and other administrators, claiming that the suspicionless strip search of the juveniles, as part of the intake process of the detention center, violated the juveniles' Fourth Amendment rights. The district court granted summary judgment for the parents. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the right of juvenile detainees held on minor offenses to be free from suspicionless strip searches was not clearly established at time the two juveniles arrested for underage drinking were strip searched, and thus, correctional officers who conducted searches were protected by qualified immunity from liability in the § 1983 action arising from the searches. The court noted that prior court decisions had recognized that a strip search of a person arrested for a minor offense was unreasonable, given that subsequent court decisions had found that state's enhanced responsibility for juveniles supported strip searches, and a recent Supreme Court decision had concluded that the Fourth Amendment did not prohibit strip search of all adult criminal detainees. The court found that under Kentucky law, the correctional officers' strip searches of the two juveniles, as part of the intake process of a juvenile detention center, were ministerial acts, and thus, the officers were not eligible for qualified official immunity from liability on the juveniles' claims of negligence, invasion of privacy, assault, false imprisonment, grossly negligent infliction of emotional distress, and arbitrary action in violation of state constitution, even if officers were both acting in good faith and within scope of their employment. (Breathitt Regional Juvenile Detention Center, Kentucky)

U.S. Appeals Court
SEARCHES

West v. Murphy, 771 F.3d 209 (4th Cir. 2014). Arrestees brought a civil rights action under the Fourth and Fourteenth Amendments against a mayor, municipal council, police department, and current and former wardens of a central booking and intake center for alleged mistreatment of persons arrested and taken to the center for booking and processing. The district court granted the defendants' motions for summary judgment on the grounds of qualified immunity. The arrestees appealed. The appeals court affirmed. The court held that the law on strip searches of arrestees in jail in a dedicated search room with compelling security justifications was not clearly established at the time that the searches were conducted. (Baltimore Central Booking and Intake Center, Maryland)

2015

U.S. Appeals Court
DETOXIFICATION
CLASSIFICATION
RULES

Castro v. County of Los Angeles, 797 F.3d 654 (9th Cir. 2015). An arrestee brought an action against a county, its sheriff's department, and two officers under § 1983 for violation of his Fourth Amendment right to be protected from harm by other inmates, arising out of an attack against the arrestee by another arrestee with whom he was jailed. A jury returned a verdict for the arrestee, and the district court denied the defendants' motion for judgment as a matter of law. The defendants appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer; (2) substantial evidence supported the jury's determination that the officer was deliberately indifferent to a substantial risk of serious harm to the arrestee; (3) sufficient evidence supported the jury's determination that the officer's deliberate indifference was the actual and proximate cause of harm to the arrestee; (4) sufficient evidence supported the jury's determination that the supervising officer was aware of, but disregarded, the risk to the arrestee posed by the other inmate; (5) the design of a jail by a municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983; (6) arrestee failed to establish that the county had actual knowledge of a risk of harm from the design of the jail, as required to establish liability under § 1983; and (7) the award of future damages to the arrestee was supported by the record. The jury returned a verdict for the arrestee on all counts and awarded him \$2,605,632 in damages. The parties later stipulated to \$840,000 in attorney fees, \$18,000 in punitive damages.

The arrestee had been placed in a "sobering cell" after his arrest for public drunkenness and was seriously injured by another drunken inmate in the sobering cell. When the other inmate was admitted, staff determined that he posed a threat to officers, requiring supervision by two officers at all times. The other arrestee was placed in the same cell as the plaintiff, even though the jail policy was to place combative inmates in a separate cell, and separate cells were available but left unused on the night of the incident. The court noted that the arrestee submitted billing records from his cognitive assistant and his treating psychologist and a chart detailing the charges for medical expenses he already

had incurred, and proffered several medical experts who testified to his need for ongoing medical care.

The jail was purportedly in violation of a state regulation requiring monitoring equipment in sobering cells, as required to establish that the county was deliberately indifferent to the Fourth Amendment right of pretrial detainees to be protected from harm by other inmates and was liable under § 1983 for injuries sustained by the arrestee. According to the court "One would assume that for any given construction project, including jails, the municipality's governing body—or a committee that it appoints to act in its stead—reviews bids, considers designs, and ultimately approves a plan for the facility and allocates funds for its construction. These choices are sufficient, in our opinion, to meet the definition of a formal municipal policy..." (Los Angeles Sheriff's West Hollywood Station, California)

U.S. District Court
SUICIDE
SCREENING

Cavanagh v. Taranto, 95 F.Supp.3d 220 (D. Mass. 2015). A pretrial detainee's son brought an action under § 1983 against correctional officers who were on duty the day of the detainee's suicide, alleging the officers violated the detainee's due process rights. The officers moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent to the detainee's mental health history and safety, to her safety through inadequate cell checks, or to her safety by failing to remove a looped shoelace from her cell. The court noted that the detainee was not identified as a suicide risk, the officers did not have access to the detainee's medical records, the officers were not trained to make suicide assessments, and the detainee's risk of suicide was not so obvious that someone other than a professional could have recognized the risk. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
RESTRAINTS
USE OF FORCE

Coley v. Lucas County, Ohio, 799 F.3d 530 (6th Cir. 2015). The administrator of a pretrial detainee's estate brought a state court action against a county, county sheriff, police officer and police sergeant, alleging § 1983 violations of the detainee's constitutional rights and various state law claims. The district court denied the defendants' motions to dismiss and denied individual defendants' requests for qualified immunity. The defendants appealed. The appeals court affirmed. The court held that a police officer's act of shoving a fully restrained pretrial detainee in a jail booking area, causing the detainee to strike his head on the wall as he fell to the cement floor without any way to break his fall, constituted "gratuitous force" in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the detainee's state of being handcuffed, in a belly chain and leg irons, led to a reasonable inference that the officer's actions were a result of his frustration with the detainee's prior restraint behavior, since the detainee was not in any condition to cause a disruption that would have provoked the officer to use such force. The court held that the police officer was on notice that his actions were unconstitutional, and therefore he was not entitled to qualified immunity from liability under § 1983. According to the court, the officer's attempts to cover up the assault by filing false reports and lying to federal investigators following the death of the detainee led to a reasonable conclusion that the officer understood that his actions violated the detainees' clearly established right not to be gratuitously assaulted while fully restrained and subdued.

The court held that a police sergeant's continued use of a chokehold on the unresisting, fully-shackled pre-trial detainee, after hearing the detainee choke and gurgle, and when a fellow officer was urging him release his chokehold, was objectively unreasonable, in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the sergeant's subsequent acts of telling other officers to leave the medical cell after the detainee was rendered unconscious, failing to seek medical help, and refusing to mention the use of a chokehold in incident reports, led to the inference that the sergeant was aware he violated the law and sought to avoid liability. According to the court, the police sergeant was on notice that his actions were unconstitutional, and therefore, he was not entitled to qualified immunity under § 1983.

The court found that the county sheriff could be held personally liable under § 1983, based on his failure to train and supervise employees in the use of excessive force, the use of a chokehold and injuries derived therefrom, and to ensure that the medical needs of persons in the sheriff's custody were met. According to the court, evidence that the sheriff helped his employees cover up their unconstitutional actions by making false statements to federal officials about his knowledge of his employees' assault, chokehold, and deliberate failure to provide medical attention to the detainee demonstrated that the sheriff at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending employees. The court noted that under Ohio law, allegations by the estate of the pretrial detainee that the county sheriff had full knowledge of the assault but intentionally and deliberately made false statements to federal officials were sufficient to state a claim that the sheriff ratified the conduct of his officers and, thus, was potentially personally liable for his officers' actions. The court concluded that the officers' use of excessive force, failure to provide medical care, assault and battery, and wrongful death could be imputed to the sheriff in his official capacity since the sheriff's false statements to federal investigators were a position that was inconsistent to non-affirmance of the officers' actions. (Lucas County Jail, Ohio)

U.S. Appeals Court
SCREENING
SEARCHES

Peters v. Risdal, 786 F.3d 1095 (8th Cir. 2015). A pretrial detainee filed a § 1983 action against a county, county sheriff, and jail officers alleging that she was subjected to an unreasonable search, that her right to freedom of speech was violated, and that the officers used excessive force. The district court granted the defendants' motion for summary judgment on the unreasonable search claim, and after a jury verdict, in the officers' favor on the remaining claims, and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed, finding that the officers did not violate the detainee's Fourth Amendment rights when they forcibly removed her clothing in a holding cell. According to the court, it was objectively reasonable for county jail officers to believe that the pretrial detainee presented a risk of harm to herself if she was permitted to retain strings on her clothing, and thus the officers did not violate her Fourth Amendment rights when they forcibly removed her clothing in a holding cell. The court noted that the detainee refused to respond to medical screening questions, refused to comply with a female officer's instruction to change into an orange jumpsuit while male officers were outside the holding cell, and acted aggressively toward the male officers when they entered. The officers restrained the detainee face down on her stomach and covered her with a paper suit while the female officer removed her clothing. (Woodbury County Jail, Iowa)

2016

U.S. Appeals Court
MEDICAL SCREENING

Bailey v. Feltmann, 810 F.3d 589 (8th Cir. 2016). An arrestee brought a § 1983 action against a law enforcement officer, alleging that the officer's decision to transport him to the jail rather than a hospital denied him emergency medical care for lacerations to his hand. The district court entered summary judgment in the officer's favor and the arrestee appealed. The appeals court affirmed. The court held that: (1) the Fourth Amendment right against unreasonable delay in medical care for an arrestee was not clearly established at the time of the incident; (2) it was clearly established, under the Due Process Clause, that pretrial detainees or arrestees had the right to be free from deliberately indifferent denial of emergency medical care; and (3) evidence did not support the finding that the arrestee had an objectively serious medical need for treatment. (Jefferson County Sheriff's Department, Missouri)

SECTION 26: JUVENILES

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The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1972

- U.S. District Court
CONDITIONS
SEPARATION Baker v. Hamilton, 345 F.Supp. 345 (W.D. Ky. 1972). Placement of juveniles (pretrial and sentenced) in an adult facility without a hearing and without separating them from adults is unconstitutional. Broken locks contribute to a finding of cruel and unusual punishment as to juveniles. Absence of outdoor exercise, recreation, or rehabilitative efforts constitutes cruel and unusual punishment as to juveniles. (Jefferson County Jail, Kentucky)
- U.S. District Court
SEPARATION Patterson v. Hopkins, 350 F.Supp. 676 (N.D. Miss. 1972). Juveniles need not be kept in a separate detention center from adults as long as they are provided with separate quarters in the county jail. (Coahoma County Jail, Mississippi)

1973

- U.S. District Court
SEPARATION Collins v. Schoonfield, 363 F.Supp. 1152 (D. Md. 1973). Segregation of juvenile to protect him from assault is not unconstitutional. (Baltimore City Jail, Maryland)

1974

- U.S. Appeals Court
MEDICATION Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1973). The court bars the use of tranquilizing drugs to punish juveniles. (Boys School and State Correctional Institution, Plainfield, Indiana)

1975

- U.S. District Court
CLASSIFICATION Miller v. Carson, 392 F.Supp. 515 (M.D. Fla. 1975). A child or juvenile remains a child or juvenile for purposes of the type of facility in which he is to be held regardless of the fact that he has been certified to be tried as an adult. (Duval County Jail, Florida)

1976

- U.S. District Court
SEPARATION Osorio v. Rios, 429 F.Supp. 570 (D. P.R. 1976). It is not unconstitutional to house disruptive juveniles in adult institutions, but notice and a hearing are required first except where brief emergency incarceration is involved. (Adult Jails, Puerto Rico)
- U.S. District Court
CONDITIONS Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Confinement in jail where violence and terror reigns violates rights secured by fourteenth and eighth amendments. Confinement of juvenile offenders to an institution where unconstitutional conditions exist constitutes cruel and unusual punishment. (San Juan District Jail)

1977

- U.S. District Court
TRANSFER Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Juveniles may not be housed in the jail for longer than it takes to arrange to transfer them. Inmates transferred from unconstitutional jail must be housed in a constitutional facility within thirty-five miles of the county. (Platte County Jail, Missouri)

U.S. District Court
CLASSIFICATION
SEPARATION

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Inmates shall be classified according to age and other factors. Juveniles will be housed in living areas separate from adults. (Jackson County Jail, Kansas City, Missouri)

1979

U.S. District Court
RIGHT TO
TREATMENT

Johnson v. Solomon, 484 F.Supp. 278 (D. Md. 1979). Committed juveniles have a right to treatment and rehabilitation. (Mental Hospital, Maryland)

1982

U.S. District Court
CONDITIONS
REMEDIES
SEPARATION

D.B., et al. v. Graham Tewksbury, et al., 545 F.Supp. 896 (D. Ore. 1982). A federal district court judge in Oregon rules in a class action suit brought by Oregon Legal Services on behalf of children confined in the Columbia County Correctional Facility (CCCF). Judge Helen J. Frye held that it is unconstitutional to hold children in adult jails, whether they are accused status offenders or are alleged to have committed crimes. Judge Frye first ruled that the conditions at CCCF constituted punishment, citing a failure by the jail to provide any form of work, exercise, education, recreation, recreational materials, adequate hygiene, minimal privacy, adequate diet or medical care, emergency health service, "treatment of emotionally disturbed children who panic in a jail setting," or visits with families. The twenty-three page opinion cited numerous other deprivations.

Judge Frye indicated that the decision as to whether these conditions are punishment was "simple," since the director of the Columbia County Juvenile Department, Graham Tewksbury, "has stated expressly that he intends to punish children" held in the jail. The court cited Bell v. Wolfish, 441 U.S. 520 (1979), stating that the due process clause of the fourteenth amendment requires that a pretrial detainee not be punished.

However, Judge Frye went further and ruled that the confinement of children, whether status offenders or accused of committing crimes, in any adult jail is unconstitutional:

...[T]o put such a child [status offender] in a jail--any jail--with its criminal stigma--constitutes punishment and is a violation of that child's due process rights under the fourteenth amendment...

Would it be constitutionally permissible to lodge children accused of committing crimes [in modern, 'enlightened' kinds of jails]?...Due process - or fundamental fairness - does not guarantee to children all the rights in the adjudication process which are constitutionally assured to adults accused of committing crimes. For example, children are not entitled to a jury trial, to indictment by grand jury, or to bail. In lieu of these constitutional rights, children are not to be treated or considered as criminals...

Juvenile proceedings, in the state of Oregon as elsewhere, are in the nature of a guardianship imposed by the state as parens patriae to provide the care and guidance that under normal circumstances would be furnished by the natural parents. It is, then, fundamentally fair constitutional - to deny children charged with crimes, rights available to adults charged with crimes if that denial is offset by a special solicitude designed for children. But when the denial of constitutional rights for children is not offset by a 'special solicitude' but by lodging them in adult jails, it is fundamentally unfair. When children who are found guilty of committing criminal acts cannot be placed in adult jails, it is fundamentally unfair to lodge children accused of committing criminal acts in adult jails...

The supervisors at jails are guards - not guardians. Jails hold convicted criminals and adults charged with crimes...A jail is not a place where a truly concerned natural parent would lodge his or her child for care and guidance. A jail is not a place where the state can constitutionally lodge its children under the guise of parens patriae.

To lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the fourteenth amendment to the United States Constitution.

Since this decision, all children have been removed from CCCF. However, Oregon state law permits placement of juveniles in adult facilities under certain circumstances. (Columbia County Correctional Facility, Oregon)

U.S. District Court
STATE LIABILITY
FAILURE TO
PROTECT

Dillon v. Director, Dept. of Corrections, 552 F.Supp. 30 (W.D. Vir. 1982). Director of state corrections agency not liable for negligent acts in local jails. Although he had a statutory duty to implement standards and goals for local correctional facilities, the court found that the Director of the Virginia Department of Corrections was not liable for isolated acts of negligence that occurred in local jails. The court held that since he had no direct control over city jail employees he could not be held vicariously liable for their negligent acts.

The plaintiff had alleged that he was the victim of a sexual assault by an adult and two juveniles while incarcerated in the juvenile section of the Roanoke City Jail as a result of various officials' negligence. He was also suing the City of Roanoke, the sheriff, and several jail personnel. The director was dismissed from the suit. (Roanoke City Jail, Virginia)

1983

U.S. Appeals Court
COMMUNICATION
WITH PARENTS
MENTAL
COMMITMENT

Doe v. Public Health Trust of Dade Co., 696 F.2d 901 (11th Cir. 1983). Communication with juvenile committed by parents may be limited. Following an action alleging deprivation of constitutional rights, the Eleventh Circuit Court of Appeals held that (1) voluntary, minor mental patients did not have a constitutional right to treatment in the least restrictive environment; (2) the hospital's rule precluding communication between voluntary, minor mental patients and parents does not constitute a constitutional violation if the rule was medically legitimate and therapeutic; and (3) the complaint stated a cause of action. (Jackson Memorial Hospital, Florida)

U.S. Appeals Court
RIGHT TO
TREATMENT
ISOLATION

Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983), cert. denied, 104 S.Ct. 2352 (1983). Juveniles who are incarcerated involuntarily do not have constitutional right to rehabilitative treatment or training; conditions of solitary confinement warrant scrutiny. An opinion by the United States Supreme Court in a class action suit against juvenile camps in Puerto Rico clarified the rights of juvenile inmates.

A district court ruling concerning the "right to treatment" and the length of time which could be spent in isolation was prompted by a class action suit of juvenile residents of the Mayaguez and Maricao Juvenile Camps in Puerto Rico. The United States Supreme Court addressed the first issue in the case and offered guidelines for considering the appropriateness of isolating juveniles.

The Court noted that several lower courts had found that juveniles who were involuntarily incarcerated had a right to rehabilitative treatment. The court characterized one basis for these decisions as the interpretation of the Supreme Court's decision in Jackson v. Indiana, 406 U.S. 715 (1972). Lower courts have reasoned that the state's authority over delinquent juveniles derives from its *paren patriae* interest in their welfare, indicating a beneficent purpose for confinement.

A second basis for lower court decisions characterized by the Supreme Court was the fact that the juvenile justice system denies certain due process safeguards, which have been found constitutional because the purpose of incarceration is rehabilitative, not punitive. The courts indicated that the compensating factor for denial of due process was thought to be the provision of rehabilitation.

In this decision, the Supreme Court found both reasonings questionable. The Court found that states may legitimately confine juveniles solely to protect society from them and suggested that even without treatment, removing a juvenile from a dangerous or unhealthy environment may be a legitimate exercise of the state's *paren patriae* authority. The Court ruled that, while rehabilitative training is no doubt desirable and sound as a matter of policy, plaintiffs have no constitutional right to that training.

In the second issue, the Court was not willing to say that the isolation practices at the camps were unconstitutional. It noted that the Supreme Court had already determined that there is no simple test for determining whether conditions of confinement are cruel and unusual.

The Court indicated that a more important consideration in this instance was that the juvenile defendants, who have not been convicted of crimes, have a due process interest in freedom which entitles them to closer scrutiny of their conditions of confinement than that accorded to convicted criminals. The state acquires the right to punish an individual only after it has tried and convicted him as a criminal.

The Court remanded the case to the district court for consideration of whether the isolation employed at Mayaguez is reasonably related to any legitimate governmental objective. (Mayaguez Industrial School, Puerto Rico)

1984

State Appeals Court
FAILURE TO
PROTECT
SUICIDE

Brewer v. Perrin, 349 N.W.2d 198 (Mich. App. 1984). Detention staff may be liable for juvenile's suicide because they failed to monitor actions and to make regular checks. An appeals court in Michigan has ordered a case to proceed to trial in which the plaintiffs charge the detention facility staff with responsibility for the suicide of their fifteen year old son. The boy was arrested after assaulting his twin brother. He was combative and belligerent during arrest and transport. Upon admission to a detention cell he continued to yell and scream. A staff member turned off an audio monitor because he decided the noise was interfering with department activities. After ninety minutes the boy hanged himself. He was only checked one time by facility staff during that period. The appeals court also instructed the jury to determine if liability might also result from violation of the state statutes regarding juvenile detention. (Southgate City Jail, Michigan)

U.S. District Court
SEPARATION
FAILURE TO
PROTECT

Doe v. McFaul, 599 F.Supp. 1421 (E.D. Ohio 1984). Local judge's "scared straight" program of confining juveniles in adult jail banned by federal court. Two seventeen-year old juvenile offenders were ordered confined in an adult corrections center in Ohio by a judge who began sending juveniles to the adult jail to deter them from a life of crime. The concept came from a television program which the local judge viewed, "Scared Straight." The youths were allegedly assaulted and raped by other juveniles while they were detained and filed suit in the United States District Court.

The local judge estimated that 250 juveniles were confined by him in the program before it was discontinued. No special arrangements were made for their confinement.

The federal court found that, because the sole purpose of confinement was to frighten the boys, their constitutional rights had been violated. Noting that courts disagree whether confining juveniles in adult facilities violates due process rights, courts agree that juveniles who are deprived of full due process rights must receive rehabilitation and individual treatment, rather than mere punitive incarceration. The court did not award damages to the plaintiffs, extending the judge's absolute immunity from damages under the doctrine of "quasi-judicial immunity" to corrections officers and county commissioners who implemented the judge's unconstitutional order. (Cuyahoga County Jail, Ohio)

U.S. Supreme Court
PREVENTIVE
DETENTION

Schall, Commissioner of New York Department of Juvenile Justice v. Martin et al., 104 S.Ct. 2403 (1984). Preventive detention of juveniles is upheld. A divided United States Supreme Court (6 justices concurring, 3 justices dissenting) upheld section 320.4(3)(b) of the New York Family Court Act, which authorized pretrial detention of an accused juvenile delinquent based on a finding that there is a "serious risk" that the child "may before the return date commit an act which if committed by an adult would constitute a crime." Attorneys brought action on behalf of a class of all juveniles detained under the provisions of Section 320.4(3)(b), arguing that it permitted detention without due process of law. The federal district court found for the plaintiffs and ordered the immediate release of all members of the class. 513 F.Supp. 691 (1981). Upon appeal, the Court of Appeals for the Second Circuit affirmed the finding of the lower court, finding the provision "unconstitutional as to all juveniles" because the statute is administered in such a way that "the detention period serves as punishment imposed without proof of guilt established according to the requisite constitutional standard." 689 F.2d 365, at 373-374 (1982). The majority of the Supreme Court found that:

"...preventive detention under the Family Court Act serves a legitimate state objective, and that the procedural protections afforded pretrial detainees by the New York statute satisfy the requirements of the due process clause of the fourteenth amendment of the United States Constitution."

The district court rejected the equal protection challenge offered by the plaintiff's attorneys, but agreed that the detention authorized under the Family Court Act violates due process. On appeal, the court of appeals affirmed the district court finding, stating that "the vast majority of juveniles detained under Section 320.5(3)(b) either have their petitions dismissed before an adjudication of delinquency or are released after adjudication." 689 F.2d at 369. The appeals court concluded that Section 320.5(3)(b) is used principally not for preventive purposes but to impose punishment, as the early release of so many of those detained contradicts the asserted need for pretrial confinement to protect the community. The appeals court concluded that Section 320(5)(b) was unconstitutional for all juveniles, reasoning that individual litigation would be a practical impossibility because the periods of detention are so short. The majority opinion of the Supreme Court, delivered by Justice Rehnquist, concluded that the preventive detention system chosen by the state of New York and applied by the New York Family Court comports with constitutional standards because the purpose for detention under the act is regulatory, and proper procedural protections precede its imposition. In the majority opinion, Rehnquist stated "There is no doubt that the due process clause is applicable in juvenile proceedings." Citing In re Gault, 387 U.S. 1, 13-14 (1967), he stressed that the issue is to "ascertain the precise impact of the due process requirement upon such proceedings."

Justice Rehnquist further stated: "We have held that certain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. See In re Gault, supra, at 31-57 (notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross examination); In re Winship, 397 U.S. 358 (1970) (proof beyond a reasonable doubt); Breed v. Jones, 421 U.S. 519 (1975) (double jeopardy). But the Constitution does not mandate elimination of all differences in the treatment of juveniles...The state has a 'parens patriae interest in preserving and promoting the welfare of the child', Santosky v. Kramer, 455 U.S. 745, 766 (1982), which makes a juvenile proceeding fundamentally different from an adult criminal trial. We have tried, therefore, to strike a balance- to respect the 'informality' and 'flexibility' that characterize juvenile proceedings, In re Winship, supra, at 366, and yet to ensure that such proceedings comport with the 'fundamental fairness' demanded by the due process clause."

The majority opinion defined two questions to answer in determining the constitutionality of the act: "...does preventive detention under the New York statute serve a legitimate state objective?... are the procedural safeguards contained in the Family Court Act adequate to authorize the pretrial detention of at least some juveniles charged with crimes?" In finding positively for the first question, the majority cited the widespread use and judicial acceptance of preventive detention in the United States. The limitations imposed by the act on the length of detention, and the entitlement of a detainee to a probable cause hearing and an expedited fact-finding hearing were also discussed in the majority opinion. In overturning the lower court decision, the majority opinion stated: "We are unpersuaded by the court of appeals' rather cavalier equation of detentions that do not lead to continued confinement after an adjudication of guilt and 'wrongful' or 'punitive' pretrial detentions... A delinquency petition may be dismissed for any number of reasons collateral to its merits..." (Department of Juvenile Justice, New York)

1985

State Court
SUICIDE

Horne v. Beason, 331 S.E.2d 342 (S.C. 1985). City not liable for suicide of seventeen-year-old Prisoner. After his arrest for charges of driving with a suspended license and operating an uninsured motor vehicle, a seventeen-year old arrestee was admitted to detention in a city lockup. Although he was wearing only a bathing suit and a bathrobe, staff did not identify him as a potential suicide risk. About thirty-five minutes after admission to his cell he was found dead, hanging from the overhead bars. The judge determined that the city should not be held liable for the suicide, stating:

...Jailors, like others, are expected to perform their duties, avoid negligence and foresee that certain acts might cause injury to others. A jailor, however, is not expected to be a fortuneteller or psychologist or psychiatrist. To require a jailor to foresee that a person incarcerated under circumstances described hereinabove would commit suicide would require of him capabilities, characteristics and genius unknown to the ordinary, reasonably prudent jailor.

The judge also noted that he could not hold the city liable because it was immune from the suit under a doctrine of sovereign immunity established in McCall v. Batson, 329 S.E.2d 741 (S.C. 1985) which held that governmental entities which did not have liability insurance (such as this city) are immune from suit until July, 1986. (Greer City Jail, South Carolina)

State Court
SEARCH

In re Terrence G., 37 CrL 2413 (N.Y. Sup. Ct. 1985). Pat search of juvenile detained as runaway upheld. A fifteen year old boy was detained by police in a New York subway station under the provisions of the state's runaway statute. A pat search was conducted, producing a pistol hidden in his pants. The plaintiff argued that the pistol could not be used as evidence because the search was inappropriate. The court disagreed, finding that the search was not a full custodial search, and that the officers had a duty to protect the youth and themselves under the statute.

State Court
DIVERSION
EQUAL
PROTECTION

State v. Washington, 37 CrL 2226 (Wash CtApp, 6/3/85). Policy which excludes juveniles charged with prostitution from diversion program struck down. King County (Seattle) juvenile court officials had a policy against accepting any teenage prostitution defendant for diversion. The policy was based on the defendants' mobility, their repeated failure to appear for court, and officials' perception that the courts could provide better supervision than the diversion program. The Washington Court of Appeals struck down the policy, finding that the legislature clearly viewed prostitution as suitable for diversion. The Court ordered the officials to consider juvenile prostitution defendants for diversion and to reject them from the program only on a case-by-case basis. (King County, Washington)

1986

U.S. District Court
RELEASE

Flood v. Lane, 638 F.Supp. 677 (N.D. Ill. 1986). A juvenile parolee brought action against the director and the deputy director of the Illinois Department of Corrections, the superintendents of youth centers, the chairman of the Illinois Prisoner Review Board, the director and deputy administrator and the supervisor of the Illinois Department of Children and Family Services for alleged violations of constitutional rights that stemmed from the custody in juvenile correction facilities beyond the parole eligibility date. The district court held that: (1) superintendents of youth centers, and the deputy administrator and supervisor of Illinois Department of Children and Family Services were entitled to qualified immunity on equal protection claims but were not entitled to qualified immunity on the juvenile parolee's claim for denial of a due process right to a hearing before denial of the parole; (2) Director of Illinois Department of Children and Family Services were

entitled to immunity from constitutional claims; and (3) the juvenile parolee whose parole could have been continued based on inadequate finances or inability of officials to find a place for parolee was entitled to only nominal damages on a procedural due process claim. (Department of Corrections, Illinois)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE

H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986). A juvenile, who had been confined at a juvenile detention center pending a trial on delinquency charges, brought action for imposition of isolation without notice or hearing, excessive length and conditions of isolation, unjustified and excessive force applied to him by superintendent of the center, and denial of medical care. The United States District Court awarded nominal damages on claims that isolation without notice and hearing and conditions of isolation violated due process and determined that the juvenile had not been deliberately deprived of medical attention, and that battery of the juvenile by the superintendent did not rise to a constitutional violation.

The juvenile appealed. The court of appeals held that: (1) the superintendent's battery of the juvenile violated the juvenile's liberty interests protected by the fourteenth amendment; (2) the superintendent was liable both personally and in his capacity as the center's superintendent for denying the juvenile medical care; (3) compensatory damages should have been awarded to the juvenile for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in relevant regulations, and for his humiliation and dejection sustained as a result of such isolation; and (4) the superintendent's conduct warranted the award of punitive damages.

The due process clause forbids punishment of pretrial juvenile detainees. The conditions of a pretrial juvenile detainee incarceration affect interests protected by the fourteenth amendment rather than the eighth amendment.

The superintendent of the juvenile detention center shoved the juvenile and slammed him against a wall and a metal bunk of the isolation cell after the juvenile laughed at a prank of another detainee and protested imposition of isolation of that detainee. This violated liberty interests protected by the fourteenth amendment, where the juvenile had not threatened to harm any property, employees, or other detainees at the center. The juvenile's injuries required medical treatment, and the superintendent's act was one of a series intended to punish the juvenile rather than maintain discipline at the center.

In determining whether the injuries sustained by the juvenile from the conduct of the superintendent of the juvenile detention center violated the juvenile's liberty interests protected by the fourteenth amendment, the fact that the juvenile did not suffer broken bones and permanent disfigurement did not require dismissal of the juvenile's injuries as negligible.

A three-day refusal to provide medical attention to the juvenile detained at the juvenile detention center pending trial on delinquency charges was a reckless disregard of the juvenile's medical needs.

Instead of an award of nominal damages of one dollar, the juvenile, who had been a pretrial detainee at the juvenile detention center, should have been awarded compensatory damages for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in regulations of the Florida Department of Health and Rehabilitative Services, and for his humiliation and dejection sustained as a result of such isolation, where the juvenile was isolated for several days, shackled and handcuffed to a metal bunk for part of that time, and deprived of virtually every physical or emotional stimulus. (Volusia Regional Juvenile Detention Center, Florida)

U.S. District Court
TRIAL AS ADULT

United States v. A.W.J., 639 F.Supp. 1558 (D. Minn. 1986). The district court did not abuse its discretion in ordering a seventeen-year-old Indian to be tried as an adult for first-degree murder and assault. The court indicated that it was particularly influenced by the heinous nature of the offense, the Indian's history of resistance to counseling efforts and defiance of authority, and the slight prospect of rehabilitation before the age 21, when, if proceeded against as a juvenile, the Indian would be released, rehabilitated or not. (Juvenile Justice and Delinquency Prevention Act)

1987

U.S. District Court
TRIAL AS ADULT

In Re T.W., 652 F.Supp. 1440 (E.D. Wis. 1987). The government sought to prosecute two juvenile Indians as adults. The district court held that: (1) it would not be in the interest of justice to prosecute as an adult one juvenile who exhibited prospects for rehabilitation if placed in a juvenile system until his twenty-first birthday, but (2) it was in the interest of justice to prosecute the second juvenile as an adult. Proceeding on motion to transfer a juvenile for prosecution as an adult must accord juvenile all due process rights.

In determining whether the transfer of a juvenile for prosecution as an adult would be in the interest of justice, the court must examine the juvenile's prospects for rehabilitation before his twenty-first birthday. (Wisconsin)

State Appeals Court
CLASSIFICATION
CONDITIONS
SEPARATION

State Ex. Rel. M.L.N. v. Greiner, 360 S.E.2d 554 (W.Va. 1987). Prisoners filed petitions challenging their confinement in correctional center. A state appeals court held that juveniles between the ages of 18 and 20 who remained under jurisdiction of juvenile court may not be incarcerated within sight or sound of adult prisoners. Juveniles who remain under continuing juvenile court jurisdiction even after their 18th birthday must be afforded the same commitment and rehabilitation rights as delinquent juveniles under the age of 18 who are under the juvenile court jurisdiction. Due process requires that nature of custody of juvenile bear relation to rehabilitative purpose. (Wood County Correctional Center)

1988

State Appeals Court
FAILURE TO
PROTECT

Dept. of Health & Rehab. Serv. v. Whaley, 531 So.2d 723 (Fla.App. 4 Dist. 1988). A juvenile detainee was awarded \$100,000 in damages and his father was awarded \$5,575 in damages, for injuries sustained as a result of an alleged sexual assault by a fellow detainee in a juvenile detention intake facility. The white, 14-year-old, 98 pound youth, was arrested for burglary and placed in a holding cell with two older black youths, 15 and 16 years old, weighing 160 and 195 pounds respectively. The other two youths were charged with burglary and armed robbery. While one had a history of several violent crimes charged (most of which had been dismissed), there was no past history of sexual assault. The two allegedly forced him to perform fellatio on one of them. Following the youth's release, he received psychiatric treatment for "post-traumatic stress syndrome", but no medical treatment for any physical injury was required. The appeals court upheld the jury verdict, noting that there was a duty to protect an alleged juvenile delinquent in custody from potential harm by third persons where the risk of such harm is foreseeable. The court rejected an argument that sovereign immunity applied in this instance, noting that insurance for just such liability existed. (Juvenile Detention Intake Facility, West Palm Beach, Florida)

U.S. Supreme Court
SENTENCES

Thompson v. Oklahoma, 108 S.Ct. 2687 (1988). Supreme Court bans execution of juveniles for crimes committed when 15 or younger. The Supreme Court overturned the death penalty of a convicted murderer who was 15 when he committed his crime. In a 5 to 3 decision, the Supreme Court effectively banned the execution of juveniles for crimes they commit when age 15 or younger because at this time no death penalty law in any state sets a minimum below 16. However, the decision left open the issue of whether states may execute those who commit offenses as 16- and 17-year-olds without violating the eighth amendment. The complicated decision does not completely ban as unconstitutional the execution of offenders who were under 16 at the time of their crimes; it leaves open the possibility that states can pass new laws that specifically allow execution of juveniles. Thompson v. Oklahoma was an appeal by a 21-year-old death row inmate who committed a murder at the age of 15. Justice John Paul Stevens wrote for four justices that, under "evolving standards of decency," it would be unconstitutional under any circumstances to apply the death penalty to someone who was 15 years of age at the time he committed an offense. In a separate opinion, Justice Sandra Day O'Connor agreed that states cannot execute persons for offenses they commit as juveniles "under the authority of a capital punishment statute that specifies no minimum age." She provided the crucial fifth vote to overturn the death sentence. She stopped short, however, of accepting the conclusion of the Stevens opinion that a state may not ever execute a person for a crime he committed when he was under 16. Justice Stevens cited as evidence of "contemporary standards of decency" the facts that none of the states whose death penalty laws expressly set a minimum age allows executions for crimes committed by persons under age 16 and that most other Western nations and the Soviet Union have banned executions of juveniles altogether. He also concluded that, because teenagers have less experience and education than adults, they are less able to evaluate the consequences of their actions and are more likely to act from emotion or peer pressure. Thus, executing juveniles is unlikely to serve the state's objective of deterring crime by juveniles, he said.

In this case, the petitioner, when he was 15 years old, actively participated in a brutal murder. Because he was a "child" as a matter of Oklahoma law, the District Attorney filed a statutory petition seeking to have him tried as an adult, which the trial court granted. He was then convicted and sentenced to death, and the Court of Criminal Appeals of Oklahoma affirmed. The narrow majority concluded that the "cruel and unusual punishment" prohibition of the eighth amendment, made applicable to the States by the fourteenth amendment, prohibits the execution of a person who was under 16 years of age at the time of his or her offense. The court held that: "(a) In determining whether the categorical eighth amendment prohibition applies, this Court must be guided by the 'evolving standards of decency that mark the progress of a maturing society,' Trop v. Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630, and, in so doing, must review relevant legislative enactments and jury determinations and consider the reasons why a civilized society may accept or reject the death penalty for a person less than 16 years old at the time of the crime." The Court noted that relevant state statutes--particularly those

of the 18 States that have expressly considered the question of a minimum age for imposition of the death penalty, and have uniformly required that the defendant have attained at least the age of 16 at the time of the capital offense--support the conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense: "That conclusion is also consistent with the views expressed by respected professional organizations, by other nations that share the Anglo-American heritage, and by the leading members of the Western European Community."

U.S. District Court
COMMUNICATIONS
WITH PARENTS
FAILURE TO
PROTECT
SUICIDE

Vega v. Parsley, 700 F.Supp. 879 (W.D. Tex. 1988). Parents of a juvenile who committed suicide while in a juvenile detention facility brought a civil rights action against the county, the sheriff, and the director of the facility. On the defendants' motion for summary judgment, the district court found that there was no eighth amendment violation with respect to conditions in the facility, including the presence of a shower curtain rod on which the juvenile hung himself. No constitutional violation was shown on the theory that the juvenile was denied treatment. No claim was stated on the theory of failure to staff, train and supervise the facility. No due process violation was established on the theory of summary judgment which caused the juvenile's death; and the defendants were entitled to qualified immunity. The plaintiffs failed to state a claim of violation of the eighth and fourteenth amendments in the alleged failure of the county, as a matter of official policy, to staff, train and supervise the facility, where the plaintiffs failed to allege or establish what specific areas of training were inadequate or to establish any other specific incident where the prisoner or child committed or attempted to commit suicide, or that any policy or custom of the detention facility caused or contributed to any suicide. Even assuming that the action by the deputy in leaving the juvenile unattended in a cell for 15 or 20 minutes, during which time the juvenile committed suicide, was negligence or gross negligence, the conduct could not be imputed to the county for purposes of liability under the civil rights statute. Not allowing the parents to visit their juvenile son during the period of two or three hours on the morning following his placement in the juvenile detention facility, during which time he committed suicide, did not rise to a constitutional deprivation. (Gonzales County Detention Facility, Texas)

1989

U.S. Appeals Court
SUICIDE
SEPARATION

Edwards v. Gilbert, 867 F.2d 1271 (11th Cir. 1989). A Section 1983 action was brought by an estate on behalf of a juvenile who committed suicide while in jail. The U.S. District Court denied the officials' motion for summary judgment in regard to counts against them in their individual capacities, and appeal was taken. The appeals court found that the conduct by jail officials in leaving a seemingly sleeping juvenile inmate, who had never threatened or attempted suicide and who had never been considered a suicide risk, in a secure cell for 45 minutes with another sleeping juvenile did not constitute deliberate indifference to the inmate's safety from self-harm. The individual officers were entitled to immunity from a civil rights action against them arising out of the inmate's suicide. The prisoner, who was awaiting sentencing, was not deprived of procedural due process under the fourteenth amendment by the placement in a particular cell or by the jailer's failure to observe him for an interval of more than 15 minutes. There was no contention that the actions of the jailers would have been proper if some sort of hearing had preceded the events surrounding the prisoner's suicide. Statutes and regulations governing the daily operations of county jails did not give the prisoner a right to an administrative hearing.

Jail officials did not demonstrate a deliberate indifference to the prisoner's safety from self-harm by the fact that the prisoner requested an appointment with the jail psychologist but that there was no record that he had seen one. Given the fact that it was not unusual for inmates to request to see a jail psychologist, the prisoner's request did not put jailers on notice that he was a potential suicide risk. It was also stated by the court that the failure of the jailers to adhere to state laws and regulations on the housing of juveniles in adult jails did not demonstrate a deliberate indifference toward the prisoner's safety from self-harm. In addition, standing alone, the violation of state laws and regulations requiring the sight and sound separation of juvenile and adult prisoners was not the basis for establishing a constitutional violation. (Okaloosa County Jail, Florida)

U.S. Appeals Court
SENTENCE

Lewis v. Attorney General of U.S., 878 F.2d 714 (3rd Cir. 1989). A youth offender who was sentenced as an adult during the service of the Youth Corrections Act sentence petitioned for habeas corpus relief, claiming entitlement to good time credits. The U.S. District Court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the petitioner was entitled to good time credits for a period starting from his sentencing as an adult, but not for the time allegedly served under conditions violating his youth sentence prior to adult sentencing. (Federal Correctional Institution, Petersburg, Virginia)

1990

U.S. District Court
CONDITIONS
STATE LIABILITY

Hendrickson v. Branstad, 740 F.Supp. 636 (N.D.Iowa 1990), modified, 934 F.2d 158. Juvenile detainees brought an action against the Governor of Iowa, the executive director of the Iowa Criminal and Juvenile Justice Planning Agency, and county officials, alleging violations of due process, the eighth amendment, the Juvenile Justice and Delinquency Prevention Act, and the state and federal contract law, arising out of the county's practice of jail juveniles in adult detention facilities. Parties filed a joint motion to dismiss the action. The juveniles filed a renewed motion for attorney fees and costs pursuant to the federal civil rights statute. The district court granted the juveniles' motion; and the action was dismissed. The court found that the juveniles were "prevailing parties" entitled to an award of attorney fees under the federal civil rights statute, where they were catalyst in bringing the State of Iowa into compliance with the mandate of the Act that juveniles not be jailed in adult detention facilities; a reasonable rate for lead counsel was \$180 per hour, and \$75 and \$90 per hour for co-counsel; the lodestar award would be enhanced by 25% for the exceptional success and results, complexity of action, and difficulty in securing representation but for contingency enhancement. The state defendants would be held liable for 90% of the awarded fees and costs, although they were not brought into the action against the county defendants until two years after the juveniles filed the initial action. The juvenile detainees were "prevailing parties" entitled to an award of attorney fees in the civil rights action arising out of the county's practice of jailing juveniles in adult detention facilities, even though the action was dismissed as moot due to Iowa legislative enactments, where the juveniles' action and the district court's injunctive relief preceded Iowa legislative action by more than three years, and thus the juveniles were catalyst in bringing Iowa into compliance with the mandate of the Juvenile Justice and Delinquency Prevention Act that juveniles not be jailed in adult detention facilities. On appeal, the court determined that the 25% fee enhancement was not warranted. (Iowa Criminal and Juvenile Justice Planning Agency)

U.S. District Court
ACCESS TO COURT
JUVENILES

Shookoff v. Adams, 750 F.Supp. 288 (M.D. Tenn. 1990). A class action was brought on behalf of persons who are confined or will be confined in secure institutions operated by the Tennessee Department of Youth Development alleging that they were denied a right of access to the courts. On the plaintiff's motion for summary judgment, the U.S. District Court found that incarcerated juveniles have a right of access to the courts comparable to incarcerated adults, and the Tennessee Department of Youth Development was not providing juveniles with meaningful access to the courts. The secure facilities did not contain law libraries, nor were there jailhouse lawyers or inmate writ writers available to assist fellow inmates, and in most cases, local legal services offices were unable to assist juveniles upon request. The Commissioner of the Tennessee Department of Youth Development was required to submit a plan to remedy the constitutional violation. (Tennessee Department of Youth Development)

1992

U.S. Appeals Court
ACCESS TO COURT

John L. v. Adams, 969 F.2d 228 (6th Cir. 1992). Incarcerated juveniles who were or would be confined in secure institutions operated by the Tennessee Department of Youth Development brought a class action alleging denial of the right of access to courts. The U.S. District Court entered summary judgment in favor of the juveniles and the Commissioner of the Department appealed. The appeals court affirming in part, reversing in part, and remanding, found that the incarcerated juveniles' constitutional right of access to courts entitled them to access to an attorney. Merely providing access to a law library would fail to assure meaningful access. However, the incarcerated juveniles' right of access to courts extended only to civil rights actions related to incarceration. Thus, the district court could require the state to reimburse contract attorneys for work connected with Section 1983 actions only to the extent that they were related to the juveniles' incarceration. In addition, the incarcerated juveniles' right of access to courts did not entitle them to affirmative legal assistance on treatment and education issues arising solely under Tennessee law. (Taft Youth Center, Pikeville, Tennessee)

1994

U.S. Appeals Court
SENTENCES

Charry v. State of Cal., 13 F.3d 1386 (9th Cir. 1994). A juvenile brought an action against California, the California Youth Authority (CYA), and related parties, alleging that denial of sentence credit for time spent on parole violated his constitutional and statutory rights. The U.S. District Court entered summary judgment with respect to the sentence credit claim, and the juvenile appealed. The appeals court, affirming the decision, found that the denial of sentence credit did not cause the juvenile to serve a greater sentence than he would have served had he been sentenced as an adult and thereby violate his constitutional and statutory rights. (California Youth Authority)

U.S. Appeals Court
JUVENILES
MEDICAL CARE
SUICIDE ATTEMPT

Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994) U.S. cert denied 115 S.Ct. 199. A juvenile detainee, by his limited conservator, brought Section 1983 and negligence claims seeking damages for injuries sustained in an attempted suicide. The appeals court, affirming in part and reversing in part, found that any violation of the Juvenile Justice Act in temporarily lodging the juvenile in an adult jail was not the proximate cause of his attempted suicide because the juvenile was scrupulously shielded from deleterious influences associated with adult facilities. The court also found that the prison

officials' failure to take special precautions to protect the juvenile detainee from suicide was not deliberate indifference to his serious medical needs, as required to establish a Fourteenth Amendment violation. Juvenile detainees were not found to be, as a class, particularly vulnerable to suicide and entitled to special screening for suicidal tendencies. (Madison County Detention Center, Kentucky)

U.S. Appeals Court
FAILURE TO
PROTECT
SUICIDE

Myers v. County of Lake, Ind., 30 F.3d 847 (7th Cir. 1994), cert. denied, 115 S.Ct. 666. A county was found by a jury to have negligently failed to prevent a juvenile delinquent's suicide attempt and damages were awarded to the parent and juvenile by the U.S. District Court. The county appealed. The appeals court found that Indiana law requires state institutions to use reasonable care to prevent their wards from committing suicide. The court also found that whether the county negligently provided so few funds to the juvenile detention center that the staff could not exercise reasonable care to prevent the juvenile's suicide attempt was a jury question under Indiana law. Both the parent and child were entitled to separate per person awards under the statute limiting the government's liability. (Lake County Juvenile Center, Indiana)

1995

U.S. District Court
CONDITIONS
IDEA - Indiv.
with Disab.
Educ. Act
MEDICAL CARE
RELEASE
REMEDIES
RIGHT TO
TREATMENT

Alexander S. v. Boyd, 876 F.Supp. 773 (D.S.C. 1995). Juveniles incarcerated at a correctional institution brought an action challenging conditions of confinement. The district court found that the Fourteenth Amendment due process clause governed, rather than the Eighth Amendment. The court found that the American Correctional Association standards are not constitutional minima for incarcerated juveniles and that the juveniles have a constitutional right to personal safety and a right to medical services. The juveniles also have a constitutional right to adequate program services designed to teach them the basic principles essential to correcting their conduct. Although the court found the facility unconstitutionally overcrowded, it did not order the release of juveniles as that was not in the best interest of the juveniles or of the public, and it was not required by the Constitution. Reference to all programs in the Individuals with Disabilities Education Act (IDEA) includes correctional facilities, and requirements of IDEA apply to juvenile correctional facilities. The requirements of the Rehabilitation Act are applicable to children with disabilities located in juvenile correctional facilities. The new individual education plan (IEP) is not required for a juvenile until the juvenile is placed in a long-term facility. The court which found the constitutional deficiencies in the juvenile correctional facility was required to first afford the state an opportunity to correct the deficiencies that have been brought to light by the litigation and identified in the court's order. It was not for the court to devise and impose a judicially-created plan. (South Carolina Department of Juvenile Justice)

U.S. Appeals Court
COMPENSATORY
DAMAGES

Mitchell v. Dupnik, 75 F.3d 517 (9th Cir. 1995). An inmate brought a § 1983 action against law enforcement and corrections officials. The district court entered judgments in favor of the inmate and the appeals court affirmed in part, reversed in part, vacated in part and remanded. The court found that a jail regulation on cell searches did not create a protected liberty interest in the inmate being present during a search of his legal papers and that inspection of legal papers is not a dramatic departure from conditions of confinement which might conceivably create a liberty interest. The court held that the jail's de facto policy of not allowing inmates to call witnesses in their defense at disciplinary hearings denied inmates due process, noting that a decision to preclude calling of witnesses must be made on a case by case analysis of potential hazards and that a blanket proscription against calling certain types of witnesses was an overreaction which violates minimum due process. The court held that punitive damages should not have been awarded against a sheriff, jail corrections commander, and superintendent of discipline in their official capacity, as such an award was in reality an assessment of punitive damages against the county. The district court had entered judgments awarding \$1,550 in compensatory damages, and an additional \$100,000 in punitive damages against the defendants in their official capacities. (Pima County Adult Detention Center, Arizona)

U.S. District Court
SUICIDE

Viero v. Bufano, 901 F.Supp. 1387 (N.D.Ill. 1995). A parent of a juvenile who committed suicide while in custody filed a § 1983 action against a probation officer and corrections employees. The district court denied the defendants' motion for dismissal, finding that the complaint sufficiently alleged that the son had presented a substantial suicide risk of serious medical needs, where it was alleged that the 14-year-old had a history of severe psychological and psychosocial problems, that just a few months before his death he was confined for mental treatment and given a prescription, and that he had expressed suicidal tendencies on at least two occasions. The court found that the complaint sufficiently alleged that the defendants were deliberately indifferent to the son's risk or need, where the complaint alleged that the parent personally advised both individuals of the son's mental history and medication needs, and also advised a department employee that the son had suicidal thoughts. The complaint asserted that the probation officer did not communicate information on the son's mental health to the department and that a department employee did not ensure that the son received adequate counseling and observation. The court found that the defendants were not entitled to qualified immunity on the basis of the objective reasonableness of their actions nor were they entitled to a dismissal on the basis that the complaint appeared to seek damages against them in their official capacities. The court also found that the probation officer was not entitled to quasi-judicial immunity. (St. Charles Youth Correctional Facility, Illinois)

1997

U.S. District Court
FALSE ARREST

Thompson v. City of Galveston, 979 F.Supp. 504 (S.D.Tex. 1997). A mother on her own behalf and on behalf of her minor son, brought a civil rights action challenging her arrest and the taking into custody of her son. The district court dismissed with prejudice her claims for false arrest, false imprisonment, and malicious prosecution. According to the court, because the mother pled nolo contendere to the charges surrounding her arrest, imprisonment and prosecution, she was barred from bringing any claims relating to her conviction unless she could prove that the conviction or sentence had been reversed on direct appeal, expunged by direct order, or otherwise declared invalid. The court found that her false arrest claim in connection with taking her minor son into custody had failed because his mother was arrested for contributing to the delinquency of another child and where the child was not arrested and the officers were authorized to take the child into custody. Police had arrested the mother on an arrest warrant on the charge of contributing to the delinquency of a minor. When she was arrested, her 10-year-old son was taken into custody at the same time and taken to a juvenile detention center. (Galveston Police Department)

U.S. District Court
TRIAL AS ADULT

U.S. v. Juvenile K.J.C., 976 F.Supp. 1219 (N.D.Iowa 1997). A juvenile was charged with aiding and abetting bank robbery and with drug offenses and the government moved to transfer the proceedings to adult criminal prosecution. The district court denied the motion, finding that the interests of justice did not warrant transferring the juvenile for adult prosecution, despite the nature of the offenses. The court noted that the juvenile's alleged participation in the bank robbery was minimal and that the juvenile could be described as a "low level" drug dealer and had no significant prior contact with the criminal justice system. The court's decision included an extensive analysis of the federal Juvenile Justice and Delinquency Prevention Act. (Iowa)

U.S. Appeals Court
TRANSFER
TRIAL AS ADULT

U.S. v. Leon, D.M., 132 F.3d 583 (10th Cir. 1997). The district court denied a government motion to transfer to adult status a juvenile who was charged with committing murder when he was 17. The appeals court affirmed, finding that the record supported denial of the government's motion because the juvenile's prior delinquency record was fairly insignificant, his intellectual development and psychological maturity were low, no efforts at past treatment had been made, and several potentially valuable programs were available. (San Juan Indian Reservation)

U.S. Appeals Court
SENTENCE
MENTAL COMMIT-
MENT

U.S. v. S.A., 129 F.3d 995 (8th Cir. 1997). The United States petitioned to civilly commit a Native American juvenile who had been adjudicated delinquent under federal law as he neared the time of his release from custody. The district court granted the petition and the appeals court affirmed. The court found that the statute providing for civil commitment of offenders due for release applied to the juvenile who was held pursuant to the Juvenile Justice and Delinquency Prevention Act, and that the juvenile was "dangerous" for the purposes of the statute. The court noted that the juvenile had a long history of violent and aggressive behavior and mental instability, and had repeatedly assaulted staff and detainees at juvenile facilities. (Federal Medical Center, Rochester, Minnesota)

1998

U.S. Appeals Court
RIGHT TO
TREATMENT
PROGRAMS

David B. v. McDonald, 156 F.3d 780 (7th Cir. 1998). A county public guardian brought a class action against the heads of state agencies to require them to provide delinquent children with emotional or mental problems with the same array of social services as they supply to other emotionally or mentally handicapped youngsters who have not engaged in misconduct. After entry of a consent decree and a subsequent change in state law, a state agency asked to be relieved of its duty to provide services to delinquents over age 13. The district court denied relief and the agency appealed. The appeals court vacated and remanded with instructions. The appeals court found that the Eleventh Amendment denied the district court of jurisdiction as to the present defendants, who did not have custody of the juveniles. The appeals court also found that termination of the consent decree would not itself be a violation of due process. (Illinois Department of Children and Family Services)

U.S. Appeals Court
FAILURE TO
PROTECT
CLASSIFICATION
CONDITIONS

Doe By and Through Doe v. Washington County, 150 F.3d 920 (8th Cir. 1998). A juvenile brought a § 1983 action against a county and a sheriff alleging that he was beaten, raped and tortured by other pretrial detainees when he was detained in the county jail. The district court jury awarded \$8,000 in compensatory damages to the juvenile and the district court awarded \$34,824 in attorney fees. The juvenile alleged that rough-housing among the five juvenile prisoners in a 200-square-foot holding cell turned dangerous and he asked to be moved to a different cell. He was moved for a few hours, but he was taken back to the holding cell by another guard who told the other occupants that the juvenile was a "snitch" and they should "handle it." Over the following five days the juvenile was subjected to unrelenting abuse, torture and humiliation. The county appealed and the appeals court affirmed. The appeals court held that there was

sufficient evidence that county policies regarding the housing of juveniles, resulting in overcrowding, caused violations of the juvenile's constitutional rights to support the imposition of liability. The sheriff had acknowledged the dangers of housing five juveniles together in a 200-square-foot holding cell for months at a time. The appeals court found that a jury verdict that found that the sheriff was not liable in his official capacity did not exonerate the county by implication. The court suggested that the jury might have had a mistaken belief that the sheriff was a defendant in his individual capacity, and did not find that the county should "reap any benefit" from this inconsistency. The appeals court decided that the juvenile was not a "prisoner" at the time he filed suit and therefore the Prison Litigation Reform Act (PLRA) did not apply to his case so as to limit an award of attorneys' fees. (Washington County Detention Center, Arkansas)

U.S. District Court
FAILURE TO
PROVIDE CARE
NEGLIGENCE

Jackson v. U.S., 24 F.Supp.2d 823 (W.D.Tenn. 1998). A former inmate brought an action under the Federal Tort Claims Act (FTCA) seeking damages for injuries he suffered in a prison riot. The district court found that the statute of limitations barred the inmate's Eighth Amendment claims. The court denied summary judgment for the defendants, finding it was precluded by genuine issues of material fact regarding the reasonableness of the actions of prison employees in treating the inmate and in locking down inmates during a fire. The inmate suffered a collapsed lung in a fire in housing units that were burning out of control during a prison riot. Prison officials locked down inmates in the housing units, and the court ordered further inquiry into whether delays were caused by negligence on the part of staff. The inmate alleged that a prison officer gave keys to another prisoner to release him during the fire, but he was never released and subsequently inhaled carbon monoxide and suffered a collapsed lung. The court also allowed further proceedings to determine if a federal prison physician exercised a reasonable degree of skill, possessed by others in the medical profession, in treatment the inmate, who was brought to the prison's front gate for evacuation to a local hospital. (Federal Correctional Institution, Memphis, Tennessee)

U.S. District Court
SUICIDE
RELEASE
FAILURE TO
PROTECT

Mroz v. City of Tonawanda, 999 F.Supp. 436 (W.D.N.Y. 1998). The administrator of the estate of a minor who committed suicide after release from custody brought a state court action asserting state and § 1983 claims. The case was removed to federal court, which granted summary judgment in favor of the defendants. The court held that the minor, who had been released by police and taken home, was not owed a duty of protection under the due process clause because the minor was no longer in custody. The minor committed suicide shortly after he was driven home by police. He had been held in a booking room at the police headquarters after being arrested. The court found that the officers did not have actual knowledge that the minor posed a risk of suicide; although the minor was crying and distraught while in custody, the police did not overhear any suicide threats. The court found that probable cause existed for the arrest of the minor and that any force used was reasonable. (City of Tonawanda Police Department, New York)

U.S. District Court
TRIAL AS ADULT

Smith v. Sullivan, 1 F.Supp.2d 206 (W.D.N.Y. 1998). A juvenile petitioned for habeas corpus relief after he was convicted of second-degree murder. The district court dismissed the petition, finding that trying the 13-year-old juvenile as an adult did not violate due process, absent evidence of mitigating circumstances that could have warranted removing the case to family court. (Brookwood Secure Center, New York)

U.S. District Court
TELEPHONE

Stricker v. Kuehl, 26 F.Supp.2d 1344 (M.D.Fla. 1998). An arrestee brought a § 1983 action against a county, sheriff and deputies. The district court held that the officers' presentation of the arrestee to a magistrate within 28 hours after the arrest did not deprive the arrestee of the right to see a magistrate in a timely manner. The court held that the arrestee did not state a claim in his complaint that he was denied the right to a telephone call because there was no evidence that the named officer had any part in the decision. The court also found that the arrestee's rights were not violated because he was forced to undress for a shower in front of other men, which the arrestee alleged was a violation of his religious beliefs, absent any allegation that the arrestee had a firm religious belief not to undress in front of other men. (Polk County Jail, Florida)

U.S. District Court
TRIAL AS ADULT

U.S. v. Anthony Y., 990 F.Supp. 1310 (D.N.M. 1998). Two Native American juveniles were charged with murder and the government moved to try them as adults. The district court held that the interests of justice were served by trying one as an adult, even though he was just one month past his 15th birthday when the killing occurred because the juvenile came from an unstable family background, played a leadership role in the alleged murders, had an extensive juvenile record, and prior treatment attempts had failed. The court declined to transfer the other juvenile for trial as an adult because he had just turned 16, had strong family connections, did not have an extensive juvenile record, and showed the ability to make good choices about his life while he was incarcerated. (U.S. District Court, New Mexico)

U.S. District Court
SENTENCE
EQUAL PRO-
TECTION

U.S. v. D.H., 12 F.Supp.2d 472 (D.Virgin Islands 1998). The government sought modification of the sentence of a juvenile who had previously been committed as delinquent under the Federal Juvenile Delinquency Act. The district court held that the juvenile was not a "person entitled to credit for presentence time served" as calculated by the Bureau of Prisons and that denial of credit did not result in a sentencing disparity. The court noted that the acts committed by the juvenile were so heinous, violent and senseless as to warrant the imposition of the maximum term of detention allowed by law. (U.S. District Court, Virgin Islands)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Green, 157 F.3d 617 (8th Cir. 1998). The government moved to have a juvenile charged with aggravated sexual abuse and sexual abuse transferred for criminal prosecution as an adult. The district court granted the motion and the appeals court affirmed. The appeals court held that the transfer of the juvenile was not an abuse of discretion because the government presented evidence that the juvenile twice had sexual intercourse with an intoxicated and unconscious woman, who suffered extensive injuries, had difficulties in prior treatment programs, and had exhausted many of the available programs to treat juvenile behavior problems. (U.S. District Court, South Dakota)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Juvenile JG, 139 F.3d 584 (8th Cir. 1998). A Native American juvenile was charged with assault with a deadly weapon and the district court granted the United State's motion to transfer the juvenile for adult prosecution pursuant to the Federal Juvenile Delinquency Act. The appeals court affirmed, finding that the district court had considered all six statutory factors for transfer, made findings of fact in each, and that it was within the sound discretion of the court to assign weights to factors. (U.S. District Court, Minnesota)

U.S. District Court
TRIAL AS ADULT

U.S. v. Juvenile (I.H.), 1 F.Supp.2d 509 (D.Virgin Islands 1998). The government moved to have a juvenile who was charged with violent crimes transferred for criminal prosecution as an adult. The court granted the motion, finding that the brutal nature of the juvenile's alleged actions, his age, and his self-characterization as a hardened criminal, tipped the balance in favor of an adult trial. (St. Thomas, Virgin Islands)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Juvenile Lwo, 160 F.3d 1179 (8th Cir. 1998). A Native American juvenile was charged with assault with a dangerous weapon, assault resulting in serious bodily injury, first-degree burglary, and use of a firearm in the commission of a felony. The district court transferred proceedings for adult prosecution. The appeals court remanded the case, finding that the district court could not consider evidence of other crimes in assessing the nature of the alleged offenses. The appeals court also held that the district court could not consider evidence of incidents for which there had been no charge or for which there had been a charge but no conviction. The appeals court found that the district court could consider evidence of such incidents in assessing the juvenile's present intellectual development and psychological maturity, his age and social background, and the nature of past treatment efforts and the juvenile's response thereto. (Oglala Sioux Tribal Court, United States District Court for the District of South Dakota)

1999

U.S. District Court
PROGRAMS
RIGHT TO
TREATMENT

Brian B. v. Pennsylvania Dept. of Educ., 51 F.Supp.2d 611 (E.D.Pa. 1999). A class of persons under the age of 21 confined in county correctional institutions challenged the constitutionality of a Pennsylvania statute that limited the schooling provided to incarcerated school-aged persons. The statute limited services for convicted school-aged persons to the amount of education provided through the Commonwealth to expelled students. The district court denied a motion for a preliminary injunction, finding that the inmates were not likely to succeed on the merits of their claim that the statute was not rationally related to a legitimate government interest. (Pennsylvania Department of Education)

U.S. District Court
SUICIDE

Smith v. Blue, 67 F.Supp.2d 686 (S.D.Tex. 1999). The parents of a juvenile who committed suicide while in custody at a juvenile detention center operated by a county sued the county and facility supervisors under § 1983. The district court declined to dismiss the case, finding that the parents stated a § 1983 claim against the county for violating the juvenile's Fourteenth Amendment right to medical protection against his own suicidal intentions, and that the parents stated a wrongful death claim. The court found that the facility supervisors' practice of pre-entering cell inspection records and then avoiding making actual visual checks on juveniles was so pervasive that it constituted a policy or custom and was the result of inadequate training. The court found that a wrongful death claim was stated by the allegation that the juvenile's death was caused by a bedsheet left unsupervised in his cell. At the time of his detention the juvenile had been diagnosed as suffering from attention deficit disorder and this was confirmed in evaluations done after his admission. During his four-month stay the juvenile allegedly threatened suicide and physically harmed himself on several occasions. When his behavior worsened to the point that he refused to come out of his cell and began hiding under his bed, he was placed in solitary confinement as punishment for refusing to follow directions. While in solitary confinement he was allowed to keep several personal

items, including a towel, T-shirts, athletic shoes with laces, and a bed sheet. One evening he was found dead, hanged from a loose sprinkler head with a bedsheet. Written cell inspection reports indicated that staff had visually checked on the juvenile every 15 minutes until the discovery of his body, but a subsequent investigation revealed that the records had been altered after the body was discovered. The original records stated that the juvenile had been checked every fifteen minutes before his death and for *four hours* after his death. Staff admitted that it was routine practice to complete inspection reports beforehand and to fail to make the required visual checks. Investigators determined that the juvenile had been dead for an hour before his body was discovered, confirming that the 15-minute checks had not been conducted. (Delta 3 Boot Camp, Harris County, Texas)

U.S. Appeals Court
SENTENCE
RELEASE

U.S. v. A.J., 190 F.3d 873 (8th Cir. 1999). After pleading guilty to an act of juvenile delinquency, involuntary manslaughter, a defendant was given probation until the age of 21. The juvenile subsequently violated the terms of her probation, her probation was revoked and she was sentenced to imprisonment until the age of 21. The juvenile appealed and the appeals court affirmed. The appeals court found that the district court was within its discretion to impose a sentence of confinement for 19 months, even after learning that the facility the court had recommended for the juvenile to serve the sentence would not accept her. (U.S. Attorney, Sioux Falls, South Dakota)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Anthony Y., 172 F.3d 1249 (10th Cir. 1999). A Native American juvenile was charged with murder and the district court granted the government's request to transfer the juvenile to adult status. The appeals court affirmed, finding that the district court did not abuse its discretion by considering the juvenile's unadjudicated conduct. The appeals court noted that although the district court must consider and make findings as to each of six statutorily delineated factors, it need not find that each factor weighs in favor of transfer, nor is it required to give equal weight to each factor. (New Mexico, Navajo Nation)

U.S. District Court
TRIAL AS ADULT

U.S. v. One Juvenile Male, 51 F.Supp.2d 1094 (D.Or. 1999). The government moved to transfer a juvenile Indian male to adult status for trial on charges arising from shooting two men. The district court denied the motion, holding that transfer was unwarranted in view of the juvenile's prospects for rehabilitation. The court noted that the seriousness of the offenses, his age, and his prior juvenile record all weighed in favor of transfer to adult status. But the juvenile had been abused and neglected most of his life and experts testified that he would stand a good chance of being rehabilitated at a residential treatment program, and that he would likely to become a career criminal if his problems were not adequately treated. (Confederated Tribes of Warm Springs Reservation, Oregon)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Smith, 178 F.3d 22 (1st Cir. 1999). A 17-year-old defendant challenged his transfer for prosecution as an adult. The appeals court held that the United States Attorney's certification of a substantial interest in a juvenile delinquency matter is an unreviewable act of prosecutorial discretion. The appeals court also held that the district court did not abuse its discretion when it determined that transferring the juvenile for adult prosecution was in the interest of justice. (United States District Court for the District of Maine)

2000

U.S. Appeals Court
PROGRAMS

Brian B. ex rel. Lois B. v. Com. Dept. of Educ., 230 F.3d 582 (3rd Cir. 2000). School-aged youths brought a class action challenging a Pennsylvania statute which limits the education available to youths convicted as adults and incarcerated in adult, county correctional facilities, but not those incarcerated in state facilities. The district court denied a preliminary injunction and the plaintiffs appealed. The appeals court affirmed, finding that the statute had rational bases, so that the plaintiffs did not show a reasonable probability that the statute would be overturned on equal protection grounds. The court noted that several county correctional facilities did not have sufficient space to provide a complete educational program, state facilities generally have higher youth populations so that per-student costs are lower, and the legislature could have found a greater need for education of the longer term youth population in state institutions. (Pennsylvania Department of Education)

U.S. District Court
FAILURE TO PROTECT

Brown v. Youth Services Intern. of South Dakota, 89 F.Supp.2d 1095 (D.S.D. 2000). Residents of a juvenile treatment facility who were allegedly sexually assaulted by a counselor brought an action alleging negligent hiring, supervision and retention, and negligent and intentional infliction of emotional distress. The district court found that fact issues precluded summary judgment with respect to the negligent hiring, retention and supervision claims. The court found that the plaintiffs may collect damages for emotional injuries resulting from their alleged physical assaults. According to the court, the retention of the employee after allegedly receiving reports of sexual abuse constituted extreme and outrageous behavior as needed to support a claim of intentional infliction of emotional distress. The court found that there were genuine material issues of fact as to whether the facility administrators knew, or should have known, of the counselor's alleged propensity for abusing children when they hired the counselor. (Youth Services International of South Dakota, Inc., operating under the name Chamberlain Academy)

U.S. District Court
PROGRAM
I.D.E.A.- Individuals with
Disabilities in Education
Act
RIGHT TO TREATMENT

Handberry v. Thompson, 92 F.Supp.2d 244 (S.D.N.Y. 2000). City prison inmates between the ages of 16 and 21 brought a class action against the city under § 1983 and a state education code alleging failure to provide adequate educational services. The district court entered judgment for the inmates, finding that substantial evidence supported the claim of inadequate education services. The court held that deprivation of educational services violated the inmates' due process rights and that the Individuals with Disabilities in Education Act (IDEA) applies to incarcerated children. The state education code guaranteed all persons under age 21 without a high school diploma the right to receive schooling. The court noted that the fact that the city had improved its educational services to inmates did not render the class action moot. (New York City Department of Correction)

U.S. District Court
USE OF FORCE
MEDICAL CARE

Jackson v. Johnson, 118 F.Supp.2d 278 (N.D.N.Y. 2000). Representatives of a juvenile who was incarcerated in a youth center sought damages for injuries sustained by the juvenile when he was subjected to a physical restraint technique (PRT). The district court dismissed the defendants' motions for summary judgment, finding that there were fact issues as to whether aides applied excessive force in violation of the juvenile's substantive due process rights. The court held that the Eighth Amendment did not apply to incarcerated juveniles, but rather that the appropriate constitutional standard for evaluating the treatment of an adjudicated juvenile delinquent is the substantive due process guarantee of the Fourteenth Amendment. The court denied qualified immunity for a nurse at the center, holding that it was not objectively reasonable for her to conclude that the juvenile was faking injury in view of his unresponsiveness and general physical condition. A 220-pound aide had initiated a PRT on the 145-pound juvenile and was assisted by a 250-pound coworker. The PRT was applied for approximately ten minutes before the officer of the day arrived at the scene, by which time the juvenile had become unresponsive, clammy, was gasping for breath and was salivating. The PRT continued to be applied for another twenty minutes, under the supervision of the officer of the day, until the juvenile was rendered unconscious. The facility nurse was summoned and no attempts were made to revive the juvenile before the nurse arrived. After some treatment in the infirmary the juvenile was returned to his housing unit. Later, the juvenile had physical difficulty while in the cafeteria which prompted another round of PRT for more than twenty minutes. When the juvenile did not respond to attempts to resuscitate him, he was transported to a hospital where he remained in a comatose state for two months. The juvenile suffers from serious and permanent physical and mental injuries as the result of the use of force. (Louis Gossett Jr. Residential Center, New York)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Richards v. Southeast Alabama Youth Ser. Diversion, 105 F.Supp.2d 1268 (M.D.Ala. 2000). The mother of a detainee who had committed suicide while in custody brought a civil rights action against city and county officials. The district court denied Eleventh Amendment immunity to the city defendants and denied summary judgment for the defendants on a deliberate indifference claim. The district court held that summary judgment was precluded by issues of material fact as to whether the actions of the police officer who transported the detainee to a privately-owned facility rose above the level of mere negligence and constituted deliberate indifference, and whether his actions were the proximate cause of the detainee's death. Despite his knowledge of the detainee's suicidal tendencies, the officer failed to search the detainee for weapons, failed to handcuff the detainee, and failed to inform the subsequent custodians of the detainee's suicidal proclivities. The court also found fact issues as to whether the actions or inactions of juvenile probation officers rose above the level of mere negligence and constituted deliberate indifference, and whether the detainee was in the custody of the officers at the time he escaped from the detention facility and committed suicide with a gun he had surreptitiously brought into the facility. The detainee had been taken to a privately-operated "diversion center" and was left alone in an intake room where he produced a gun, fled the center, walked into a wooded area and fatally shot himself. (Southeast Alabama Youth Services Diversion Center)

2001

U.S. Appeals Court
CONDITIONS
RELEASE

Huang v. Johnson, 251 F.3d 65 (2nd Cir. 2001). A mother brought a federal civil rights action on behalf of her son, a juvenile, seeking damages for violation of his liberty interest by placing him in a more constrictive facility without prior hearing and for allegedly falsely imprisoning him beyond his release date. The district court granted judgment for the defendants on all claims and the mother appealed. The appeals court affirmed in part, and reversed in part. The appeals court held that the transfer of the juvenile to a more restrictive juvenile treatment facility, which still allowed release for work or schooling, did not implicate a liberty interest entitled to due process protection. But the appeals court found that the action that essentially challenged the duration of confinement, based on refusal to credit time spent in detention on an unrelated charge, was not barred by the *Heck* rule. (New York Office of Children and Family Services)

U.S. District Court
TRIAL AS ADULT

Steele v. Withrow, 157 F.Supp.2d 734 (E.D.Mich. 2001). An inmate in state court custody sought a writ of habeas corpus alleging the trial court abused its discretion by sentencing him as an adult. The federal district court denied the inmate's application, finding that the trial court's determination that the defendant should be sentenced as an adult for an offense which happened when the defendant was 15 years old was not unreasonable in light of the evidence presented. A probation agent had testified that the defendant was not amenable to treatment, was disruptive at a juvenile detention center, and would be dangerous if released at age 21. A social services agent

had testified that the defendant should be sentenced as an adult based on the severity of his crime and his poor participation in the juvenile justice system. (Flint, Michigan)

U.S. District Court
TRIAL AS ADULT

U.S. v. A.F.F., 144 F.Supp.2d 797 (E.D.Mich. 2001). A juvenile was charged with first-degree murder for a crime allegedly committed within Indian county. The government moved to transfer the juvenile to adult status and the district court denied the motion. The court found that transferring the 17-year-old juvenile to adult status was not in the interest of justice, even though the juvenile had an extensive history of juvenile justice contacts. The court found that the juvenile had showed positive responses when he received continuous and structured programs and that he would benefit from the rehabilitative programs, that were available within the juvenile justice system. (Saginaw Chippewa Reservation, Michigan)

2002

U.S. District Court
SEARCH

Reynolds v. City of Anchorage, 225 F.Supp.2d 754 (W.D.Ky. 2002). A juvenile filed a suit against a juvenile officer under § 1983, alleging that the officer and others violated her constitutional rights during a warrantless strip search of her and four other juveniles at a juvenile facility. The district court granted summary judgment in favor of the defendants. The court held that at the time the juvenile was strip searched, it was not clearly established that a search warrant supported by probable cause was required to constitutionally strip search a minor suspected of possessing drugs in a juvenile home or detention center. Each girl had been searched one at a time, in her own room, with a female staff member present. (Bellewood Presbyterian Home for Children, Fayette County, Kentucky)

U.S. District Court
TRIAL AS ADULT

U.S. v. D.R., 225 F.Supp.2d 694 (E.D.Va. 2002). A juvenile was charged with an act of murder on United States Park Service land. The government moved to transfer the juvenile from juvenile to adult proceedings pursuant to the Juvenile Justice and Delinquency Prevention Act. The district court granted the petition, finding that it was supported by evidence that the juvenile was nineteen years old, and was 75 hours shy of age eighteen when the alleged murder occurred. The court noted that the juvenile left his parents' home at age sixteen to begin independent living, and he possessed normal intelligence. (Eastern District, Virginia)

U.S. Appeals Court
TRIAL AS ADULT

U.S. v. Ramirez, 297 F.3d 185 (2nd Cir. 2002). The government moved for discretionary transfer of a juvenile who was charged with ten acts of juvenile delinquency, for prosecution as an adult. The district court granted the motion and the appeals court affirmed. The appeals court held that the Juvenile Delinquency Act continued to apply, where the defendant committed crimes before age eighteen and was charged before his twenty-first birthday, but turned twenty-one during the pendency of the criminal proceedings. (U.S. District Court for the Southern District of New York)

2003

U.S. Appeals Court
SENTENCE

Armstrong v. Bertrand, 336 F.3d 620 (7th Cir. 2003). A juvenile who had received an adult sentence of 20 years for first-degree reckless homicide sought a federal writ of habeas corpus. The district court denied the petition and the juvenile appealed. The appeals court affirmed, finding that state statutes governing the sentencing of juvenile defendants did not create an impermissible irrebuttable presumption of an adult sentence for juveniles charged with intentional homicide, and were not unconstitutionally vague. (Wisconsin)

U.S. Appeals Court
MEDICAL CARE
FAILURE TO PROVIDE
CARE

Austin v. Johnson, 328 F.3d 204 (5th Cir. 2003). The parents of a convicted youth offender who was sentenced to attend a one-day "boot camp," brought a § 1983 action to recover damages after the minor suffered severe symptoms from a heat stroke. The district court rejected the camp directors' immunity defenses and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that requiring the minor to perform military-style exercises was neither cruel nor unusual punishment. The court held that the parents' allegation that officials waited nearly two hours before calling an ambulance for the unconscious minor was sufficient to state a claim for deliberate indifference to serious medical needs, and that the defendants were not entitled to official immunity for gross negligence claims. The court found that the Eighth Amendment applied to the convicted minor, even though he had been free to select the date and location of his punishment and his parents could have stayed to observe the camp if they had wanted. The court noted that the minor was not free to leave the camp and was subject to jail time if he failed to comply with camp requirements. (STAR Boot Camp, Harrison County, Texas)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act

Christina A. Ex Rel. Jennifer A. v. Bloomberg, 315 F.3d 990 (8th Cir. 2003). A class of juvenile inmates sued the secretary of a state corrections department and the superintendent of a state training school, alleging First and Fourteenth Amendment violations and violation of the Individuals with Disabilities Education Act (IDEA). The parties settled the action and the inmates moved for the award of attorney's fees and expenses. The district court granted fees and expenses and the defendants' appealed. The appeals court reversed, finding that the state training school qualified as a correctional facility under the fee-limiting provisions of the Prison Litigation Reform Act (PLRA) and that the class of juvenile inmates was not a "prevailing party" because the agreement approved by the district court did not provide for any contempt remedies. (State Training School at Plankinton, South Dakota)

U.S. District Court
EQUAL PROTECTION

Hedgepeth v. Washington Metro. Area Transit, 284 F.Supp.2d 145 (D.D.C. 2003). The mother of a 12-year-old girl who was arrested for eating a french fry in a rail transit station, brought a § 1983 action alleging equal protection and other violations. The district court entered judgment for the defendants. The court held that the city's "no citation" policy for juvenile offenses did not violate the daughter's equal protection rights. Adult violators were able to be released with a citation, while the law required juveniles to be arrested and detained. The 12-year-old ate one french fry in a transit station and she was arrested. The transit police officer searched the girl and her possessions and handcuffed her behind her back. The handcuffs remained on until she was released from the juvenile processing station several hours later. (Juvenile Processing Center, District of Columbia)

U.S. District Court
MEDICAL CARE

Lewis Ex Rel. Lewis v. Gagne, 281 F.Supp.2d 429 (N.D.N.Y. 2003). A juvenile adjudicated as delinquent and detained in a correctional facility, and his mother, brought an action against a state children and family agency, alleging excessive use of force and deliberate indifference to his serious medical needs. The district court denied summary judgment or judgment on the pleadings for the defendants. The court held that the Prison Litigation Reform Act (PLRA) applied to the juvenile, and that informal efforts made by the juvenile to notify the facility of his complaints were sufficient to satisfy the exhaustion requirement of PLRA. The juvenile, who was thirteen at the time, alleged that facility staff intentionally caused his hand and wrist to be seriously burned on a metal heater, and deliberately denied further medical treatment in an outside hospital or by a burn specialist. (Tyron Residential Facility, New York)

U.S. Appeals Court
SENTENCE

U.S. v. Juvenile, 347 F.3d 778 (9th Cir. 2003). A juvenile who had pleaded guilty in a delinquency proceeding in federal district court, appealed his sentence. The appeals court reversed, vacated, and remanded. The appeals court held that the district court abused its discretion in imposing a seven-year sentence on the 14-year-old juvenile, only eighteen months of which was to be served in a juvenile detention facility. (Fort Belknap Indian Reservation, Montana)

2004

U.S. Appeals Court
MEDICAL CARE
FAILURE TO PROVIDE
CARE

A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 572 (3rd Cir. 2004). A juvenile detainee, by and through his mother, sued a county juvenile detention center and county officials alleging that they violated his substantive due process rights by failing to protect him from harm. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed and remanded in part. The appeals court held that the custodial setting of the juvenile detention center presented a situation in which forethought about the detainee's welfare was not only feasible but obligatory, therefore the detainee's claims must be analyzed under the deliberate indifference standard. The court found that summary judgment was precluded by fact issues as to whether the detention center's staff were deliberately indifferent to the mental health needs and safety of the detainee. The detainee had been subjected to repeated assaults by fellow residents. (Luzerne County Juvenile Detention Center, Pennsylvania)

U.S. District Court
FAILURE TO PROTECT

Estevez-Yalcin v. Children's Village, 331 F.Supp.2d 170 (S.D.N.Y. 2004). A parent brought an action alleging that her children had been sexually abused by a volunteer at a county juvenile treatment rehabilitation center. The district court granted summary judgment in favor of the defendants. The court held that the county did not negligently hire the volunteer or negligently retain or supervise the volunteer. According to the court, the failure of the county to conduct a background check on the volunteer before hiring him did not amount to negligent hiring, absent evidence that a routine background check would have revealed that the volunteer had a propensity to harm children. (The Children's Village, Westchester County Health Care Corporation, New York)

U.S. Appeals Court
EQUAL PROTECTION

Hedgepeth v. Washington Metro. Area Transit Auth., 386 F.3d 1148 (D.C.Cir. 2004). The mother of a 12-year-old who was arrested and detained for eating a french fry in a rail transit station brought a § 1983 action. The district court ruled in favor of the defendants and the mother appealed. The appeals court affirmed, finding that the city's "no-citation" policy for juveniles was rationally related to the legitimate goal of promoting parental awareness and involvement with children who commit delinquent acts. The court held that the policy did not violate equal protection, even though adults who were seen eating food in transit authority facilities would merely have been given a citation. According to the court, classifications based on youth, like those based on age in general, do not trigger heightened scrutiny for equal protection purposes. The appeals court expressed dissatisfaction about the case in the opening paragraph of its opinion: "no one is very happy about the events that led to this litigation. A twelve-year-old girl was arrested, searched, and handcuffed. Her shoelaces were removed, and she was transported in a windowless rear compartment of a police vehicle to a juvenile processing center, where she was booked, fingerprinted, and detained until released to her mother some three hours later—all for eating a single french fry in a Metrorail station." (Juvenile Processing Center, District of Columbia)

U.S. Appeals Court
SEARCH

N.G. v. Connecticut, 382 F.3d 225 (2nd Cir. 2004). Parents of two female juveniles brought a suit under § 1983 for damages and injunctive relief, alleging that strip searches of the juveniles in juvenile detention facilities violated their Fourth Amendment rights. After a bench trial, the district court dismissed the complaint. The juveniles appealed. The appeals court vacated and

remanded. The appeals court held that strip searches conducted on female juveniles after their transfer from one detention facility to another were unlawful because they were undertaken after the juveniles had been initially searched and had remained in custody. The court found that a strip search of a juvenile to determine whether the juvenile had taken a missing pencil required reasonable suspicion that the juvenile possessed the pencil. The court held that strip searches performed upon juveniles' initial admission to state detention facilities did not violate the Fourth Amendment because the state had an enhanced responsibility to take reasonable action to protect them from hazards resulting from the presence of contraband, even though they had not been convicted of any crime and were not confined awaiting trial on criminal charges. (Girls Detention Center, Connecticut)

U.S. District Court
CONDITIONS

Smith v. Barber, 316 F.Supp.2d 992 (D.Kan. 2004). Five high school students who were arrested for plotting an armed attack on a school sued city and county officials under § 1983, alleging violations of the Fourth Amendment relating to searches and their arrest, malicious prosecution, and violations of the Eighth Amendment. The district court granted summary judgment in favor of the defendants. The court held conditions of pretrial detention in a county jail did not violate the Eighth Amendment where state law required the juveniles to be held separate from adults, the students were only held from 11 to 21 days, and they were allowed outside. The court found that the requirement that they clean their own cells did not implicate the Eighth Amendment. The court also held that a detention hearing broke the chain of causation required to support a claim for malicious prosecution. (Labette County Jail, Kansas)

U.S. District Court
SEARCH

Smook v. Minnehaha County, 340 F.Supp.2d 1037 (D.S.D. 2004). Former detainees at a county juvenile detention center brought a § 1983 action challenging the center's policy of strip-searching all juveniles admitted to the facility, regardless of the seriousness of the charged offense or the existence of suspicion. The court granted partial summary judgment in favor of the detainees. The court held that the suspicionless strip-searches of all juveniles could not be based on the officials' state statutory duty to report child abuse or neglect, where the duty to report was not a duty to detect, and any interest the officials had in detecting abuse was outweighed by the detainees' privacy interests. According to the court, the strip-search of non-felony detainees violated their rights to freedom from unreasonable searches, even though the center had implemented a policy requiring a two-hour grace period before a search. The court found that the officials' legitimate security interest in preventing the introduction of weapons and contraband was outweighed by the severe privacy intrusion entailed by the searches, given the lack of evidence of more than minimal smuggling of weapons and contraband into the facility. The court found a Fourth Amendment violation when a female detainee who was arrested for a curfew violation was strip-searched, even though she was permitted to keep her bra and underwear on, because the offense was not normally associated with weapons or drugs, there was no suspicion that the detainee was carrying or concealing a weapon or contraband and there was no indication of a prior delinquency record. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. Appeals Court
SENTENCE

U.S. v. Cuello, 357 F.3d 162 (2nd Cir. 2004). A defendant convicted of being a felon in possession of a firearm challenged his sentence. The appeals court affirmed, finding that the defendant's youthful offender adjudication under state law counted as a prior adult conviction in determining the base offense level under the Sentencing Guideline for weapons convictions. (United States District Court for the Southern District of New York)

U.S. Appeals Court
SENTENCE

U.S. v. Patrick V., 359 F.3d 3 (1st Cir. 2004). A juvenile was adjudicated delinquent under the Federal Juvenile Delinquency Act (FJDA) after he pleaded guilty to the charge of arson causing extensive property damage. The district court sentenced the juvenile to 30 months detention followed by 27 months supervised release, and made the juvenile jointly liable for restitution in the amount of \$728,142. The juvenile appealed. The appeals court affirmed in part and remanded. The appeals court held that the imposition of restitution in the amount \$728,142 was not an abuse of discretion. The court instructed the district court to determine the appropriateness of the detention facility based on a more developed record. (United States District Court for the District of Maine)

2005

U.S. Appeals Court
PROGRAMS
CONDITIONS
SUICIDE
SEPARATION

Daniels v. Woodside, 396 F.3d 730 (6th Cir. 2005). A juvenile who had been detained at a county jail on a murder charge brought a § 1983 action alleging violation of a state law governing pretrial detention of juveniles, and violation of due process when he was expelled from an alternative education program. The district court granted summary judgment for a sheriff and school district, but denied it for a school superintendent. The juvenile and the superintendent appealed. The appeals court affirmed in part and reversed and remanded in part. The court found no violation of state law, where the law provided an exception for housing dangerous juveniles in jails, and the statutory requirements of sight and sound separation were followed. The court held that conditions of confinement deriving from the juvenile's classification as a suicide risk did not constitute punishment prohibited by the Due Process Clause, or cruel and unusual punishment. The juvenile was subjected to 24-hour lock-down, deprived of exercise, dressed in a suicide gown that did not close in the back, denied access to a shower and personal hygiene products, and denied visitors. The court found that the juvenile, who dropped out of high school when he attained the age of 16, did not have a protected property interest in attending an alternative high school program offered

by the school district, and therefore the due process claim against the superintendent was precluded. (Macomb County Jail, Michigan)

U.S. District Court
FALSE ARREST
USE OF FORCE

Davis ex rel. Davis v. Borough of Norristown, 400 F.Supp.2d 790 (E.D.Pa. 2005). A parent and minor child brought a § 1983 action against a borough and police officers, alleging constitutional violations in connection with the child's arrest and detention after the child dropped bottles of beer that he was holding and fled. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that fact issues existed as to whether the borough had a policy or custom of detaining juveniles for underage drinking. The court also found fact issues as to whether officers' conduct was reckless or callous with respect to the force used in the arrest. The child alleged that he was tackled into cement steps, punched in the face, kicked in the face and that his arm was pulled so hard that it broke his shoulder. According to the court, the plaintiffs failed to establish that the borough had a custom or policy of inadequately training its officers in the use of force. (Borough of Norristown, Pennsylvania)

U.S. District Court
FAILURE TO PROTECT

K.M. v. Alabama Dept. of Youth Services, 360 F.Supp.2d 1253 (M.D.Ala. 2005). Former juvenile detainees sued the Alabama Department of Youth Services (DYS), a former DYS employee, and others under § 1983 and state law, alleging that they were sexually and physically assaulted and harassed while in DYS custody. The former employee moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee violated a detainee's due process right to bodily integrity, and whether a detainee suffered emotional distress so severe that no reasonable person could be expected to endure it, as the result of a sexual assault by the employee. The court noted that even if a juvenile detainee had serious mental health problems before an employee allegedly inserted his finger into her vagina, that fact would not preclude a finding that any mental distress she experienced was caused by the employee, for the purposes of the Alabama tort of outrage. The court found that the employee was not protected by state-agent immunity under Alabama law because the alleged acts were not committed in the performance of his job-related duties. (Department of Youth Services, Chalkville Campus, Alabama)

U.S. District Court
FAILURE TO PROTECT

Merriweather v. Marion County Sheriff, 368 F.Supp.2d 875 (S.D.Ind. 2005). A county jail detainee who was beaten and raped by fellow detainees sued a sheriff, claiming deprivation of his due process rights and negligence. The district court denied the sheriff's motion to dismiss the action. The court found fact issues as to whether the sheriff had shown deliberate indifference to the risk posed to the detainee by housing him with detainees who had a record of prior violence, and whether the sheriff had immunity from the negligence claim under state law. The court also found material issues of fact as to whether the level of violence in the juvenile detention portion of the jail was significant and obvious, and whether the sheriff's policies and procedures were systematically inadequate. The court noted that alleged material improvements in procedures for protecting jail detainees from assault, implemented after the detainee was beaten and raped by fellow detainees, were irrelevant in determining whether the due process rights of the detainee were violated. (Marion County Jail, Indiana)

U.S. Appeals Court
COMMUNICATION
WITH PARENTS

Myers v. Potter, 422 F.3d 347 (6th Cir. 2005). A juvenile detainee brought a suit against a police officer and a police chief, alleging unlawful detention for interrogation in violation of the Fourth Amendment. The district court entered summary judgment for the defendants and the detainee appealed. The appeals court reversed. The court held that the police officer was not entitled to qualified immunity for detaining the juvenile without probable cause to arrest, or a valid consent from his mother or the detainee, and for failing to allow the detainee to leave upon request. The court noted that the district court should have given the detainee given more time to conduct discovery before ruling on the claim against the police chief. The detainee alleged, among other things, that the officer conducted a polygraph examination, threatened him with life imprisonment, repeatedly called him profane names, and showed him photographs of charred bodies discovered during the fire that was under investigation. (City of McMinnville, Tennessee)

U.S. District Court
SEARCH

Smook v. Minnehaha County, S.D., 353 F.Supp.2d 1059 (D.S.D. 2005). Former detainees at a county juvenile detention center brought a § 1983 action challenging the center's policy of strip-searching all juveniles admitted to the facility, regardless of the seriousness of their charged offense or the existence of suspicion. The district court granted partial summary judgment in favor of the detainees and the defendants appealed. The appeals court held that the center's policy of strip searching minors arrest for minor or non-felony offenses, without any individualized determination of reasonable suspicion that the individual was or was likely to be carrying or concealing weapons, drugs or other contraband, violated the Fourth Amendment. The court denied qualified immunity for former and current directors of the detention center. The court noted that there was no demonstration that the incidence of smuggling weapons or contraband into the center was more than minimal, nor that any weapons or contraband could not have been discovered with less invasive searches. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. District Court
PROGRAMS
RELIGION

Teen Ranch v. Udow, 389 F.Supp.2d 827 (W.D.Mich. 2005). A faith-based organization that provides residential care for youth brought an action against state officials challenging a moratorium on funding to the organization on First and Fourteenth Amendment grounds. The district court granted summary judgment in favor of the state officials. Youths who were state wards could opt out of placement in the residential care program, or could decline to participate in religious activities. The court found that this did not give the youths a “genuinely independent private choice” so as to make the state’s funding of the program permissible under the Establishment Clause. According to the court, the state selected the youths’ placement, and although the youths could opt out of religious programs, they were not able to choose from a “menu of secular and religious programs.” The court noted that pressure toward conformity would be great in the long-term residential program where the youth were separated from their parents, deprived of many personal freedoms, and were under the daily supervision and influence of those who were leading the religious activities. The court also held that the moratorium did not violate the Free Speech Clause nor the Equal Protection Clause. (Teen Ranch, Michigan)

2006

U.S. District Court
FAILURE TO PROTECT

Blankenship v. Virginia, 432 F.Supp.2d 607 (E.D.Va. 2006). The mother of a ward of a juvenile correction center who was permanently disabled after being beaten by two fellow inmates, brought a § 1983 civil rights action against the center’s former superintendent, former assistant superintendent, and former counselor for failing to protect the ward. The defendants filed a motion for summary judgment. The district court held that: (1) the superintendent and assistant superintendent could not be held liable under § 1983 based on constructive knowledge of the threat against ward; (2) the fact that the juvenile correction center had been decertified by the Virginia Board of Juvenile Justice, standing alone, did not necessarily confer on the superintendents the knowledge as to the ongoing and substantial risk of harm to residents, as was required to hold them liable under § 1983; (3) evidence indicating a deficiency in the center’s record management capabilities did not suggest a willful disregard for the safety of the wards; and (4) a counselor responded reasonably to ensure the ward’s safety when the ward was moved to the more secure isolation pod. (Beaumont Juvenile Correction Center, Virginia)

U.S. Appeals Court
IDEA· Individuals with
Disabilities Educ. Act
PROGRAMS

Handberry v. Thompson, 436 F.3d 52 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983, alleging failure to provide adequate educational services. The district court entered declaratory judgment in favor of the inmates and entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court found that the requirement that the city develop temporary education plans (TEP) for students who did not have current individualized education plans (IEP) within thirty days of enrollment was appropriately narrowly drawn. According to the court, a special monitor appointed to oversee the implementation of the order was not a “special master” for the purposes of PLRA and therefore the district court’s requirement that the city and state pay for the special monitor did not violate PLRA, which required expenses of special masters to be borne by the judiciary. The court noted that the special monitor was not given a mandate to exercise quasi-judicial powers, such as finding facts that would be binding on the court. (New York City Department of Corrections, New York City Department of Education)

U.S. Appeals Court
PROGRAMS
PLRA· Prison Litigation
Reform Act

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city’s other jails had to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a “special master,” and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City Department of Education, New York City Department of Corrections, Rikers Island)

U.S. Appeals Court
CONDITIONS

Hanks v. Prachar, 457 F.3d 774 (8th Cir. 2006). A former county jail detainee brought a § 1983 action against county jail officials, alleging violation of his due process rights in connection with the use of restraints and confinement, requesting damages and injunctive relief. The district court

granted summary judgment in favor of the officials and the former detainee appealed. The appeals court affirmed the grant of summary judgment on the claims for injunctive relief, reversed the grant of summary judgment on the claims for damages, and remanded for further proceedings. The court held that the detainee's claim for injunctive relief was rendered moot by detainee's release from jail. The court found that summary judgment was precluded by genuine issues of material fact as to whether the detainee was restrained in shackles and chains or confined in a padded unit for the purpose punishment, or for valid reasons related to legitimate goals. The detainee alleged he was placed in four-point restraints, chained to a wall in a "rubber room," forced to shower in waist chains and shackles, and denied hearings before being punished. The detainee was 17 years old when he was admitted to the jail. (St. Louis County Jail, Minnesota)

U.S. District Court
ACCESS TO COURT
MEDICAL CARE
FAILURE TO PROTECT
CONDITIONS

J.P. v. Taft, 439 F.Supp.2d 793 (S.D. Ohio 2006). A former juvenile corrections facility inmate sued the facility and individuals, claiming the lack of access to courts to pursue a claim of injury from being assaulted by an officer, and claims of substandard accommodations. The district court denied the defendants' motion for summary judgment. The court held that the inmate had standing to bring a claim that the facility interfered with his access to courts by not making adequate efforts to provide attorneys, and that the inmate stated a claim that the facility interfered with his right of access to court, by not providing an attorney to pursue a legitimate claim that officers unconstitutionally restricted his bathroom privileges. The court found that the facility did not display deliberate indifference to the condition of inmate who was beaten by an officer, noting that while he was not taken to an infirmary, a nurse monitored his condition. According to the court, the inmate did not state a claim that conditions of confinement violated his rights under the Eighth Amendment when he alleged that showers were cold, worms were coming in through a drain, and his personal hygiene materials had been lost during a move from one cell to another. The court found that these problems were insufficiently serious. The court held that the inmate stated claim that conditions of confinement violated his rights under Eighth Amendment, when he alleged that officers frequently denied inmates the opportunity to use a rest room, as a disciplinary measure, forcing them to urinate into objects including latex gloves. (Ohio Department of Youth Services, Marion Juvenile Correctional Facility)

U.S. District Court
CREDIT

J.P.C. (JUV) v. U.S., 430 F.Supp.2d 961 (D.S.D. 2006). A juvenile petitioned for a writ of habeas corpus, seeking credit, which the federal Bureau of Prisons (BOP) had refused to award him, for days spent in custody at age 19 prior to revocation of his probation. The district court held that the juvenile was entitled to credit for time spent in custody awaiting a dispositional hearing that resulted in revocation of his release and commencement of official detention. The court noted that no deference was due to the revised Bureau of Prisons policy of no longer granting credit to juveniles for pretrial or pre-hearing custody, where the change in policy was based on one district court decision from another jurisdiction, the policy was made without notice to the Judicial Conference, and was not founded on statutes, comments, or independent setting of policy. The plaintiff was a juvenile when he was placed on probation until age 21. He violated his conditions of probation and was taken into custody at age 19 by order of the court. He was held in a county jail (with adult offenders) until his dispositional hearing. (South Dakota)

U.S. District Court
EQUAL PROTECTION
FAILURE TO PROTECT
ISOLATION
CONDITIONS

R.G. v. Koller, 415 F.Supp.2d 1129 (D.Hawai'i 2006). Three juveniles who either identified themselves as, or were perceived to be, lesbian, gay, bisexual, or transgender and who had been confined at a state juvenile correctional facility brought claims against the facility alleging due process, equal protection, Establishment Clause, and access to counsel violations. The district court granted the juveniles' motion for a preliminary injunction in part, and denied in part. The court held that the juveniles had standing to seek a preliminary injunction preventing the facility officials from engaging in unconstitutional conduct and requiring them to implement policies and procedures to ensure their safety at the facility. Although none of the juveniles were incarcerated at the time the complaint was filed, the court found that enjoining certain unconstitutional conduct and requiring officials to implement policies and procedures to remedy those conditions would remedy the juveniles' injury, and, the juveniles showed a likelihood of repetition of the injury given that each of the juveniles had been incarcerated at the facility two to three times over a relatively short period of time, each had been released only to return to the facility a short time later, and the juveniles' experiences indicated that, at the time the complaint was filed, each juvenile was likely to return to the facility. The court found that the facility's adoption of a youth rights policy providing that youth should not be discriminated against on the basis of sexual orientation did not render moot the juveniles' claims for injunctive relief from sexual orientation harassment, absent evidence, aside from the policies themselves, that the facility had altered its treatment of its lesbian, gay, bisexual, or transgender wards. According to the court, the facility's use of isolation to "protect" its lesbian, gay, bisexual, or transgender wards was not within the range of acceptable professional practices and constituted punishment in violation of their due process rights. The court found that such practices were, at best, an excessive and therefore unconstitutional, response to the legitimate safety needs of the institution. The court held that officials at the facility acted with deliberate indifference in violation of due process in allowing pervasive verbal, physical, and sexual abuse to persist against lesbian, gay, bisexual, or transgender juveniles. The juveniles complained of a relentless campaign of harassment based on their sexual orientation that included threats of violence, physical and sexual assault, imposed social isolation, and near constant use of homophobic slurs. (Hawai'i Youth Corr'l Facility)

U.S. Appeals Court
SEARCH

Smook v. Minnehaha County, 457 F.3d 806 (8th Cir. 2006). Former detainees at a county juvenile detention center brought a § 1983 class action against a county and individual county officials, challenging the center's policy of strip-searching all juveniles admitted to the facility regardless of the seriousness of the charged offense or the existence of suspicion. The district court entered partial summary judgment for the former detainees, finding that the searches violated the minors' constitutional rights, and that the officials were not qualifiedly immune from the minors' claims. The county and officials appealed the denial of qualified immunity. The appeals court reversed and remanded, finding that requiring a juvenile to strip to her undergarments upon admission to the facility was reasonable under the Fourth Amendment. A juvenile female had been brought to the center for a curfew violation. A female staff person took her to a private restroom, directed her to remove her shorts, t-shirt, and sandals, but allowed her to remain attired in her undergarments. The staff person touched her to look under her arms, between her toes, and through her

hair and scalp. The court held that the search was reasonable under Fourth Amendment in light of the state's responsibility to act *in loco parentis* with respect to juveniles in lawful state custody, and that the special needs for such a search outweighed the invasion of personal privacy. The court held that the officials were entitled to qualified immunity where there was no appellate decision from the Supreme Court or any federal circuit ruling on such an issue, and, although many courts had concluded that the strip search of adult offenders without individualized suspicion was unreasonable, those cases did not consider interests involved when state had responsibility to act *in loco parentis*. (Minnehaha County Juvenile Detention Center, South Dakota)

2007

U.S. District Court
SENTENCE
TRIAL AS ADULT

Curry v. South Carolina, 518 F.Supp.2d 661 (D.S.C. 2007). A former prisoner who obtained post-conviction relief treating him as juvenile, with the result that his sentence was shortened, brought a § 1983 suit against the state, various state departments, a county public defenders office, and others. A U.S. magistrate judge recommended that the court dismiss the complaint without prejudice. The former prisoner filed objections and moved to amend his complaint. The district court granted the motions in part and denied in part. The court held that the Department of Corrections and the Department of Juvenile Justice were entitled to Eleventh Amendment immunity. The court found that the public defender and the private attorney did not act under the color of state law. The court held that the public defenders office was not a state actor and that the County Solicitor's Office was entitled to Eleventh Amendment immunity. The court also found that Eleventh Amendment immunity extended to the state's Family Court. But the court ruled that the proposed amendment of the complaint was not futile to the extent that it sought to add a municipal police department as a defendant. The court noted that the amended complaint alleged that the police department had improperly treated the criminal defendant as an adult with the result that he was sentenced as an adult without the benefit of a juvenile waiver hearing. (Charleston County, South Carolina)

U.S. District Court
PAROLE
RELEASE

L.H. v. Schwarzenegger, 519 F.Supp.2d 1072 (E.D.Cal. 2007). Juvenile parolees brought a class action against a parole board, claiming that regulations denied their due process rights to have two hearings prior to a parole revocation, or alternatively one prompt comprehensive hearing. The parolees moved for summary judgment on the due process claim, and the claim for injunctive relief. The district court granted the motion in part and denied in part. The court held that the requirement that a hearing take place within 60 days following the parolee being taken into custody violated the parolees' due process rights. The court held that summary judgment was precluded by fact issues as to whether an injunction should be issued mandating that the parole board issue a regulation requiring a hearing within 10 days of assumption of custody over a juvenile parolee. (California Juvenile Parole System)

U.S. District Court
SUICIDE

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (S.D. Ohio 2007). A plaintiff, on behalf of the estate of her son who committed suicide while incarcerated at juvenile detention facility, brought a wrongful-death action against the facility, its superintendent, a non-profit provider that performed suicide evaluations at the facility and a social worker employed by the provider. The plaintiff asserted claims under § 1983 and state law. The facility and non-profit moved for summary judgment. The district court denied the motion. The court held that under the state compulsion test, the private provider that performed suicide evaluations at the juvenile detention facility was not a "state actor" for § 1983 purposes. The court noted that the facility did not exert any control over suicide evaluations and the provider performed evaluations on an as-needed basis using its own standards and procedures. According to the court, the facility had discretion to implement the provider's recommendations resulting from the evaluations. But the court held that the private provider was a state actor for § 1983 purposes because it was performing a "public function." (Central Ohio Youth Center)

2008

U.S. District Court
PLRA- Prison Litigation
Reform Act
PROGRAMS

Alabama Disabilities Advocacy Program v. Wood, 584 F.Supp.2d 1314 (M.D.Ala. 2008). A disabilities advocacy program brought a suit against the director of the Alabama Department of Youth Services (DYS) seeking access to residents, facilities, staff and records under federal law. The parties filed a joint motion seeking court approval of a settlement. The court held that the limitations under the Prison Litigation Reform Act (PLRA) on prospective relief concerning conditions had no application because the suit was not concerned with conditions of confinement or effects of actions by officials on confined juveniles. The court also found that the advocacy group was not subject to the limitations on prisoner suits under PLRA. The court held that the settlement of the suit was fair, adequate, reasonable and not illegal or against public policy, and thus warranted the requested court approval. According to the court, the agreement contained a detailed plan for facilitating access, a process for dispute resolution between the parties, and a provision for the court's retaining jurisdiction for one year for the limited purpose of enforcing compliance. (Alabama Department of Youth Services)

U.S. Appeals Court
PRIVACY
SUPERVISION

Henry v. Milwaukee County, 539 F.3d 573 (7th Cir. 2008). Female corrections officers brought a Title VII action against a county, challenging a staffing policy that reduced the number of shifts available to them at a juvenile detention center, and alleging other incidents of discrimination as well as retaliation. Following a bench trial, the district court entered judgment for the county. The officers appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that a sex-based classification, requiring that each unit in the juvenile detention center be staffed by at least one officer of the same sex as the detainees in the unit, was not reasonably necessary for the rehabilitation, security, or privacy functions of the facility, with respect to the third shift when only one officer was present on each unit. According to the court, the classification was therefore not a bona fide occupational qualification (BFOQ), so as to be exempt from Title VII. The court noted that no staff-on-inmate sexual assaults had occurred, the county had not investigated alternatives to same-sex staffing, juvenile privacy concerns were not limited to the third shift, and the effectiveness of role-modeling programs did not require the presence of a same-sex staff member at all times. (Milwaukee County Juvenile Detention Center, Wisconsin)

U.S. District Court
CONDITIONS

Khadr v. Bush, 587 F.Supp.2d 225 (D.D.C. 2008). A detainee at the United States Naval Base in Guantánamo Bay, Cuba, filed a petition for a writ of habeas corpus. The detainee moved for judgment on the pleadings or, in the alternative, for summary judgment, and the government filed a cross-motion to dismiss or to hold the petition in abeyance pending completion of military commission proceedings. The district court granted the motions in part and denied in part. The court held that the Military Commissions Act (MCA) did not bar a challenge to detention based on the detainee's capture as a juvenile, but the detainee's challenge to detention based on his capture as a juvenile was barred by the habeas statute. The court found that a provision of the Military Commissions Act (MCA) barring courts from having jurisdiction over habeas petitions brought by or on behalf of an alien detained by the United States as an enemy combatant did not apply to the habeas claim brought by a detainee at the United States Naval Base in Guantánamo Bay, Cuba., where the detainee's claim was entirely independent from the prosecution, trial, or judgment of a military commission. But the court held that the detainee's petition challenged the conditions of his confinement, rather than the legality of his detention, and, thus, was barred by a provision of habeas statute barring the courts from having jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States as an enemy combatant. The court noted that the detainee's request for relief was not tantamount to a request for outright release and was more accurately characterized as a request seeking a different program or location or environment. (United States Naval Base in Guantánamo Bay, Cuba)

2009

U.S. District Court
FAILURE TO PROTECT
USE OF FORCE

Gregg v. Ohio Dept. of Youth Services, 661 F.Supp.2d 842 (S.D. Ohio 2009). The resident of a juvenile correctional facility brought a § 1983 action against facility officials, seeking damages for injuries he allegedly received at the hands of corrections officers. The court held that summary judgment was precluded by a fact question as to whether correctional officers used excessive force in subduing the resident when he stepped out of the line to receive his medication. The court also found a fact question as to whether correctional officers who observed the alleged beating of the resident by other officers violated the resident's constitutional rights by failing to intervene in the beating. (Ohio River Valley Juvenile Correctional Facility, Ohio)

U.S. District Court
PAROLE

L.H. v. Schwarzenegger, 645 F.Supp.2d 888 (E.D. Cal. 2009). Juvenile parolees brought a class action against various state officials and agencies seeking to change parole revocation procedures. Following a settlement which included injunctive relief, the plaintiffs moved for attorney fees and costs. The court granted the motion in part. The court held that a five percent reduction of the lodestar amount (number of hours the prevailing party reasonably spent on the litigation multiplied by a reasonable hourly rate) was appropriate, resulting in an attorney fee award of \$4,421,173. The court held that the parolees could recover attorney fees related to their unsuccessful motions to amend the complaint, and for time billed for communications among parolees' counsel. According to the court, the hours billed by the parolees' attorneys for motion practice and drafting of complaint were reasonable, but that time billed by the parolees' attorneys related to press about the case was not reasonable. (California)

U.S. Appeals Court
DUE PROCESS
PRIVACY
SEARCH

Schmidt v. City of Bella Villa, 557 F.3d 564 (8th Cir. 2009). An arrestee brought a § 1983 action against a police chief and city, alleging the chief's photographing of her tattoo violated her rights. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed. The court held that the chief's photographing of the arrestee's tattoo was not an unreasonable search and did not violate due process, and the photographing of the arrestee's tattoo did not amount to a strip search under Missouri strip search law. The court found that the action of photographing the tattoo did not violate the Fourth Amendment, despite the fact that the arrestee was required to unzip her pants for the photograph and that the photograph was taken by male officer. The court concluded that the photograph served legitimate law enforcement purposes, the chief told the arrestee that photograph was needed for identification purposes, and the photograph was taken in private. The court noted that the arrestee gave a false date of birth and social security number. She was arrested for making a false declaration and for being a minor in possession of alcohol. (City of Bella Villa, Missouri)

2010

U.S. Appeals Court
PROGRAMS
MEDICAL CARE

Betts v. New Castle Youth Development Center, 621 F.3d 249 (3rd Cir. 2010). A juvenile who had been adjudicated as delinquent brought an action against a residential maximum security center and several staff members for a spinal cord injury that occurred during a "pick-up" football game at the center. The district court granted summary judgment for the center and its staff. The juvenile appealed. The appeals court affirmed. The appeals court held that the district court did not err in granting Eleventh Amendment immunity to the youth development center, which was a detention facility for juveniles run by the Pennsylvania Department of Public Welfare (DPW), where the DPW was an administrative agency without existence apart from the Commonwealth. The court found that there was not a sufficient likelihood that serious harm would result from juveniles playing tackle football without protective equipment, as required for the juvenile to establish that the center and its officials violated his Eighth Amendment rights. (New Castle Youth Development Center, Pennsylvania)

U.S. District Court
SENTENCE

Clark v. Conahan, 737 F.Supp.2d 239 (M.D. Pa. 2010). A juvenile and his parents brought an action against juvenile court judges, a private attorney, juvenile probation staff, the owner of construction company, property owners, and others. They alleged that, in connection with a scheme to divert juvenile offenders to newly constructed privately-owned juvenile detention facilities in return for kickbacks, the defendants violated the juvenile's constitutional rights. The plaintiffs also alleged that the defendants engaged in a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, and alleged false imprisonment and intentional infliction of emotional distress (IIED). The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the judge was not entitled to immunity for his alleged non-judicial conduct and was not entitled to legislative immunity for budgetary actions he took in his role as president judge. The court held that the juvenile lacked standing to assert a Racketeer Influenced and Corrupt Organizations Act (RICO) action against the defendants because the juvenile

asserted that he suffered great emotional distress and loss of earning capacity based on the education that he missed while in custodial detention, which did not demonstrate any concrete monetary loss. (Pennsylvania)

U.S. District Court
MEDICAL CARE
USE OF FORCE

Lewis v. Mollette, 752 F.Supp.2d 233 (N.D.N.Y. 2010). A former juvenile inmate at the Office of Child and Family Services (OCFS) brought a § 1983 action against OCFS employees, alleging use of excessive force and failure to intervene. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) the events leading up to the use of a physical restraint technique (PRT) on the juvenile inmate by OCFS employees; (2) the need for a second employee to assist the first employee with the PRT; and (3) the cause of the arm fracture the inmate sustained during the incident. (Highland Office of Child and Family Services, New York)

U.S. District Court
SEARCH

Mashburn v. Yamhill County, 698 F.Supp.2d 1233 (D.Ore. 2010). A class action was brought on behalf of juvenile detainees against a county and officials, challenging strip-search procedures at a juvenile detention facility. The parties cross-moved for summary judgment. The court held that the scope of an admission strip-search policy applied to juvenile detainees was excessive in relation to the government's legitimate interests, in contravention of the Fourth Amendment. According to the court, notwithstanding the county's general obligation to care for and protect juveniles, the searches were highly intrusive, the county made no effort to mitigate the scope and intensity of the searches, and less intrusive alternatives existed. The court found that county officials failed to establish a reasonable relationship between their legitimate interests and post-contact visit strip-searches performed on juvenile detainees, as required under the Fourth Amendment. The court noted that the searches occurred irrespective of whether there was an individualized suspicion that a juvenile had acquired contraband, and most contact visits occurred between juveniles and counsel or therapists. (Yamhill County Juvenile Detention Center, Oregon)

U.S. District Court
MEDICAL CARE
USE OF FORCE

Molina v. New York, 697 F.Supp.2d 276 (N.D.N.Y. 2010). A juvenile detainee brought an action against a state, its Office of Children and Family Services (OCFS) that operated a youth correctional facility, state and facility officials, and detention aides, asserting § 1983 claims and claims of negligence and assault and battery. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the juvenile detainee's allegations that detention aides at the youth correctional facility broke his arm while restraining him were sufficient to support a plausible Eighth Amendment claim that the aides used excessive force. The court held that the detainee's allegations that he had to wait approximately 15 hours before being diagnosed and scheduled for surgery despite the obviousness of his injuries and his own pleading for assistance, were sufficient to state an Eighth Amendment claim of deliberate indifference to his serious medical needs. (Louis Gossett Jr. Residential Center, New York)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE
SUICIDE

Simmons v. Navajo County, Ariz., 609 F.3d 1011 (9th Cir. 2010). Parents of a pretrial detainee who committed suicide while in custody brought a state-court action against various jail personnel, their supervisors, and their county employer, asserting claims under state tort law, § 1983, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the parents appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no evidence that a prison nurse knew the pretrial detainee who subsequently committed suicide was in substantial danger of killing himself, as required to demonstrate the prison nurse was deliberately indifferent to such risk in violation of the Fourteenth Amendment. According to the court, although the nurse was aware that the detainee had previously attempted to take his own life, suffered from depression, and was at some risk of making another attempt, at the time detainee killed himself, over a month had elapsed since his suicide attempt, during which time the detainee received counseling, took antidepressants, and by all accounts, was doing better. The court found that prison nurses were not deliberately indifferent, under the Fourteenth Amendment, to the detainee who committed suicide, because they failed to ensure that the detainee had daily evaluations pursuant to the suicide prevention policy, absent evidence that they knew detainee was in a suicidal crisis. According to the court, the prison nurses' failure to retrieve the used gauze the pretrial detainee used to hang himself did not constitute deliberate indifference in violation of the Fourteenth Amendment, absent evidence that the prison nurses were aware the pretrial detainee had accumulated the gauze. The court found that the teenage pretrial detainee waved the prison nurse away on the morning of the day he committed suicide, when the nurse tried to speak with him, because he was absorbed in watching television, did not show that the prison nurse was subjectively aware of the detainee's risk of suicide, so as to support a deliberate indifference claim against the prison nurse under the Fourteenth Amendment. (Navajo County Jail, Arizona)

U.S. District Court
DUE PROCESS
SUICIDE

Wells v. Bureau County, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor. The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

2011

U.S. District Court
IDEA- Individuals with
Disabilities Education
Act
PROGRAMS

Keitt v. New York City, 882 F.Supp.2d 412 (S.D.N.Y. 2011). An inmate brought a pro se suit against a state, state agencies, a city, city agencies, and state and city officials, and corrections officers, claiming that he was dyslexic and that the defendants failed to accommodate his disability in the public school system and in education programs offered in juvenile detention facilities and adult correctional facilities, as well as in prison disciplinary proceedings. The court dismissed some claims and denied dismissal for other claims. The court held that the inmate's Individuals with Disabilities Education Act (IDEA) claims accrued for limitations purposes no later than the year in which he reached the age of 21, where under New York law, a child was no longer entitled to the protections and benefits of the IDEA after the age of 21 and did not have a right to demand a public education beyond that age.

The court found that the inmate adequately alleged the personal involvement of the Commissioner of the New York Department of Correction in an alleged ongoing violation of the inmate's constitutional rights, stating a § 1983 claim against the Commissioner. The inmate alleged that: (1) he repeatedly gave the Commissioner complete details of the failures of a correctional facility to accommodate his disability; (2) the Commissioner had "full knowledge" of the refusal to accommodate from both grievances and disciplinary appeals; (3) the Commissioner had upheld every decision denying accommodation; and (4) the Commissioner failed to take action to remedy the ongoing violation.

The court held that the inmate stated ADA and Rehabilitation Act claims for compensatory damages against state and correctional officials in their official capacities when he alleged that at least some of the accommodations he sought at a correctional facility would allow him to overcome obstacles to his meaningful participation in existing programs and existing educational services, without fundamentally altering the programs. The court noted that New York's continued acceptance of federal funds after 2001 waived its sovereign immunity with respect to the inmate's Rehabilitation Act claims arising after that date, where the state's continued acceptance of federal funds was a knowing relinquishment of its Eleventh Amendment immunity. The court ruled that the inmate's allegations suggested a discriminatory animus against him because of his alleged disability, dyslexia, and thus, Eleventh Amendment immunity did not apply to shield the state, state agencies and state employees from the inmate's ADA claims. (New York City Dept. of Correction- Rikers Island, State of New York Department of Correctional Services Elmira Correctional Facility, New York)

U.S. District Court
USE OF FORCE
FAILURE TO PROTECT

Plair v. City of New York, 789 F.Supp.2d 459 (S.D.N.Y. 2011.) A pre-trial detainee at an adolescent jail brought an action against a city, city officials, and corrections officers, asserting claims under § 1983 and state law arising from an incident in which an officer allegedly punched him in the face. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee failed to state excessive force claims against supervisory officials and a § 1983 claim against the city. The court found that correctional officers and supervisors did not have immunity under New York law from state law claims and the city did not have immunity under New York law from state law claims brought on the respondeat superior basis. The court held that the determination of whether the pretrial detainee's claim against the city for its negligent hiring, training, and retention of officers and supervisors allegedly involved in the detainee's beating could not be resolved at the motion to dismiss phase because of factual issues as to whether the actions of these officers and supervisors were undertaken in the scope of their employment. (Robert N. Davoren Center, Rikers Island, New York City)

U.S. District Court
CONDITIONS
DUE PROCESS
ISOLATION
PROGRAMS

Troy D. v. Mickens, 806 F.Supp.2d 758 (D.N.J. 2011.) Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJJ), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation.

The defendants filed a motion for summary judgment. The district court denied the motion. The court held that there was no evidence that a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJJ) facilities was educated about filing a form with a social worker as the procedure for filing an administrative grievance, as required for the procedure to be available to the delinquent to exhaust his § 1983 claims against JJJ and mental health providers. The court also found that there was no evidence the New Jersey Juvenile Justice Commission (JJJ) provided written notice to the juvenile delinquent housed at JJJ facilities of the opportunity to appeal their disciplinary sanctions, which would have triggered the requirement that he appeal each sanction within 48 hours of notice, as required to exhaust administrative remedies.

The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJC facilities; (2) whether placing the juvenile delinquent housed in temporary close custody and special observation status implicated a liberty interest; (3) whether a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities had procedural due process protections available to him upon a change of status; (4) whether the juvenile delinquent had a liberty interest implicated in his transfer to a more restrictive placement; (5) whether the juvenile delinquent had sufficient procedural due process protections available to him upon transfer to a more restrictive placement; and (6) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers acted with malice or reckless indifference. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

2012

- U.S. Appeals Court
SENTENCE *Bunch v. Smith*, 685 F.3d 546 (6th Cir. 2012). A state inmate filed a petition for a writ of habeas corpus. The district court denied the petition, and the petitioner appealed. The appeals court affirmed, finding that a state court's determination that the juvenile petitioner's 89-year sentence did not violate the Eighth Amendment was reasonable, was not contrary to, or an unreasonable application of, clearly established federal law, and thus did not warrant federal habeas relief, despite the juvenile's contention that his consecutive, fixed-term sentences amounted to the practical equivalent of life without parole. (Ohio)
- U.S. District Court
FAILURE TO PROTECT
STATE LIABILITY *Hampton v. Sabie*, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Illinois Youth Center)
- U.S. Appeals Court
SUICIDE
DUE PROCESS
MEDICAL CARE *Miller v. Harbaugh*, 698 F.3d 956 (7th Cir. 2012). The mother of a minor who hanged himself while incarcerated at a state youth detention facility, on her own behalf and as the minor's representative, brought a § 1983 action against state officials, alleging deliberate indifference to the minor's serious mental illness. The 16-year-old youth had a history of mental illness and was known to have attempted suicide at least three times. The district court granted summary judgment for the officials. The mother appealed. The appeals court affirmed. The appeals court held that, even assuming that state supervisory officials' decision to use metal bunk beds in rooms of a youth detention facility that were occupied by residents who were mentally disturbed but did not appear to be imminently suicidal, amounted to deliberate indifference to the residents' serious medical needs, the law was not then so clearly established as to defeat the officials' defense of qualified immunity to the due process claim. (Illinois Youth Center, IYC Kewanee, Illinois)
- U.S. Supreme Court
SENTENCE *Miller v. Hobbs*, 132 S.Ct. 2455 (2012). Following transfer from a state juvenile court to a state circuit court, a defendant was convicted of capital murder, for an offense he committed when he was 14 years old. The defendant appealed his conviction and the resulting sentence of life in prison without the possibility of parole. The state appeals court affirmed. The U.S. Supreme Court combined this case with another similar case. The court reversed and remanded, finding that that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. (Alabama)
- U.S. Appeals Court
CONDITIONS
SENTENCE *U.S. v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012). Three juvenile defendants, each of whom was a member of an Indian tribe and who pleaded true to a charge of aggravated sexual abuse with children in the district court, appealed their conditions of probation or supervision requiring registration under the Sex Offender Registration and Notification Act (SORNA). The appeals court affirmed. The court held that the SORNA registration requirement as applied to certain juvenile delinquents in cases of aggravated sexual abuse superseded the conflicting confidentiality provisions of the Federal Juvenile Delinquency Act (FJDA), and that the SORNA registration requirement did not violate the juveniles' constitutional rights. (Fort Peck Tribes, Montana)

2013

- U.S. Appeals Court
USE OF FORCE
MEDICAL CARE
SUICIDE ATTEMPT
DUE PROCESS *Blackmon v. Sutton*, 734 F.3d 1237 (10th Cir. 2013). A former juvenile pretrial detainee brought a § 1983 action against various members of a juvenile detention center's staff, alleging they violated the Fourteenth Amendment rights guaranteed to him as a pretrial detainee. The district court denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, and reversed in part. The court held that the eleven-year-old pretrial detainee's right to be free from punishment altogether was clearly established at the time the staff allegedly used a chair bearing wrist, waist, chest, and ankle restraints to punish detainee, for the purposes of the juvenile detention center's staff's qualified immunity defense. According to the court, the senior correctional officer approved a decision by one of his subordinates, a fully grown man, to sit on the chest of the eleven-year-old without any penological purpose. The court found that the detainee's Fourteenth Amendment due process rights were violated when employees allegedly failed to provide the eleven-year-old detainee with any meaningful mental health care despite his obvious need for it. The court noted that prison officials who assumed a "gate keeping" authority over the prisoner's access to medical professionals were deliberately indifferent to the detainee's medical needs when they denied or delayed access to medical care. But the court also held that the detainee's alleged right to be placed in a particular facility of his choice while awaiting trial was not clearly established at the time the director failed to transfer detainee to a nearby shelter. The court stated: "Weeks before eleven-year-old, 4'11," 96-pound Brandon Blackmon arrived at the juvenile detention center in Sedgwick, Kansas,

officials there made a new purchase: the Pro–Straint Restraining Chair, Violent Prisoner Chair Model RC–1200LX. The chair bore wrist, waist, chest, and ankle restraints. In the months that followed, the staff made liberal use of their new acquisition on the center's youngest and smallest charge. Sometimes in a legitimate effort to thwart his attempts at suicide and self-harm. But sometimes, it seems, only to punish him. And that's the nub of this lawsuit.” (Juvenile Residential Facility, Sedgwick County, Kansas)

U.S. District Court
DUE PROCESS
FAILURE TO PROTECT

E.A.F.F. v. U.S., 955 F.Supp.2d 707 (W.D.Tex. 2013). Unaccompanied alien minors brought an action against Office of Refugee Resettlement (ORR) officials, alleging they were physically and sexually abused while they were in detention awaiting final adjudication of their immigration status. The officials moved for partial summary judgment. The district court granted the motions. The court noted that a person detained for deportation is equivalent to a pretrial detainee, and a pretrial detainee's constitutional claims are considered under the Due Process Clause. The court held that the officials could not be held liable for due process violations that occurred when the unaccompanied alien minors were physically and sexually abused as a result of alleged overcrowding at a detention facility, where they were being held while awaiting final adjudication of their immigration status, and where there was no evidence that the officials were responsible for decisions regarding the facility's capacity.

According to the court, isolated incidents of physical and sexual abuse by staff members at the detention facility were insufficient to put the officials on notice of a substantial risk of future abuse, as required to hold the officials liable for deliberate indifference in failing to protect the minors' safety in violation of their due process rights. The court noted that other incidents of alleged abuse were investigated by the Texas Department of Family and Protective Services and did not result in any abuse findings. The court found that officials' failure to systematically interview minors concerning their abuse allegations did not amount to deliberate indifference to their safety in violation of their due process rights, where officials spoke to some of the minors during their monitoring visits, and clinicians were on-site and available to speak with the minors on a regular basis. The court held that the officials could not be held liable in their supervisory capacities on a theory of failure to train or supervise, for due process violations arising from alleged physical and sexual abuse by staff members at the detention facility, where staff members received training in behavior management and de-escalation techniques, officials responded to reports of abuse by recommending or providing further training, officials adopted safety policies designed to prevent abuse, and officials recommended that staff members work in pairs and they were unaware that staff members were working individually. (Nixon facility Operated by Away From Home, Inc., Texas)

U.S. District Court
FAILURE TO PROTECT

Grimes v. District of Columbia, 923 F.Supp.2d 196 (D.D.C. 2013). A juvenile detainee's mother filed a § 1983 action against the District of Columbia for violation of the Eighth Amendment and negligent hiring, training, and supervision, after the detainee was attacked and killed by other detainees. After the district court ruled in the District's favor, the appeals court vacated and remanded. On remand, the District moved for summary judgment. The district court granted the motion. The court held that officials at the juvenile detention facility were not deliberately indifferent to a known safety risk, and thus their failure to protect the detainee from an attack by another detainee did not violate the Eighth Amendment. According to the court, there was no evidence of a history of assaults on youth at the facility, such that any facility employee knew or should have known that a fight between the detainee and another youth was going to take place, or that the youth who fought with the detainee had a history of assaultive behavior while at the facility. The court also found no evidence that a municipal custom, policy, or practice caused any such violation. The court also held that the mother's failure to designate an expert witness barred her claim. (Oak Hill Detention Facility, District of Columbia)

U.S. District Court
FAILURE TO PROTECT
ISOLATION
MEDICAL CARE

Harrelson v. Dupnik, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue precluded summary judgment as to an Eighth Amendment medical claim against the employees.

According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owned to the inmate.

The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate. The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event.

The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed

to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. Appeals Court
ACCESS TO COURT
SENTENCE

In re Morgan, 713 F.3d 1365 (11th Cir. 2013). A prisoner serving a life sentence without parole, based on conduct committed while he was a juvenile, filed an application for leave to file a second or successive motion to vacate, set aside, or correct the sentence. The appeals court denied the motion. The appeals court held that although a decision of the Supreme Court established a new rule of constitutional law, in that it determined for the first time in *Miller* that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the rule was not made retroactive to cases on collateral review, as would warrant granting leave to the prisoner to file a second or successive motion to vacate, set aside, or correct his sentence. (Florida)

U.S. Appeals Court
SENTENCE

In re Pendleton, 732 F.3d 280 (3rd Cir. 2013). Prisoners who were convicted as juveniles applied for leave to file second or successive habeas petitions based on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. The appeals court granted the applications. The court held that prisoners made a prima facie showing that the new constitutional rule regarding imposition of life sentences on juvenile offenders was retroactive. (Pennsylvania Department of Corrections)

U.S. District Court
FALSE ARREST
FALSE
IMPRISONMENT
UNLAWFUL
DETENTION

Nelson v. District of Columbia, 953 F.Supp.2d 128 (D.D.C. 2013). A jury ruled in favor of an apartment resident in her and an arrestee's action against a police officer for false arrest and imprisonment and Fourth Amendment violations stemming from a search of the residence she shared with the arrestee. The officer moved for judgment as a matter of law (JMOL). The court held that the officer violated the resident's Fourth Amendment rights by detaining and handcuffing her for two hours while executing a weapons search of the apartment. According to the court, the evidence was sufficient to support the conclusion that the police officer lacked sufficient safety or efficacy concerns to justify under the Fourth Amendment detaining and handcuffing the resident's hands behind her back for two hours. The court noted that the officer did not assert that the arrestee was a gang member or express any concern that an armed cohort of the arrestee might be present, the arrestee was in jail at the time of the search, and the resident was at home alone and in underwear when the police arrived. (District of Columbia)

2014

U.S. District Court
SEARCHES

Benjamin v. Fassnacht, 39 F.Supp.3d 635 (E.D.Pa. 2014). The parents of a juvenile, who was arrested and charged with summary offenses and committed to a youth detention facility after he threatened several girls in his neighborhood, brought an action on his behalf against state troopers, a county, and county officials, asserting claims under § 1983 and state law. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that: (1) county officials did not have the right to conduct blanket strip searches of juveniles upon admission to detention facility; (2) detention facility officials who strip searched the juvenile were not entitled to summary judgment on the unreasonable search claims; (3) county officials were not entitled to qualified immunity from the unreasonable search claims; and (4) the county was not entitled to summary judgment on the unreasonable search claims. The court found that summary judgment of the Fourth Amendment claims were precluded by fact issues as to whether the county and the facility's director had a policy, practice, or custom of conducting blanket strip searches and acted with deliberate indifference to the rights of the juveniles being detained at the facility. (Lancaster County Youth Detention Center, Pennsylvania)

U.S. District Court
MEDICAL CARE
FAILURE TO PROTECT

Poore v. Glanz, 46 F.Supp.3d 1191 (N.D.Okla. 2014). A juvenile female held as an inmate in the medical unit of a county jail brought an action against the county and the county sheriff in his individual capacity under § 1983 alleging deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, based on an alleged failure to prevent a detention officer's repeated sexual assaults. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine disputes of material fact as to whether the county sheriff was aware of the risk of sexual assault by detention officers as to female inmates housed in the medical unit of the county jail, and whether he failed to take steps to alleviate that risk. The court also found a genuine dispute of material fact as to whether the county jail had a policy and practice of housing juvenile female inmates in a wing of the medical unit which was not under direct supervision and was frequently single-staffed, such that it placed those inmates at a substantial risk of sexual assault by jail staff. (Tulsa County Jail, also called the David L. Moss Criminal Justice Center, Oklahoma)

U.S. Appeals Court
FALSE ARREST

S.L. ex rel. K.L. v. Pierce Tp. Bd. of Trustees, 771 F.3d 956 (6th Cir. 2014). A juvenile, by and through his guardian, filed a § 1983 action against a township, its police chief, a police officer, the superintendent of a juvenile detention center, and the center's intake officer, alleging false arrest, false imprisonment, malicious prosecution, and loss of filial consortium. The defendants moved for summary judgment. The district court denied the motion. The defendants appealed. The appeals court affirmed, and on remand the district court entered summary judgment in favor of the superintendent and the intake officer, and the plaintiffs appealed. The appeals court affirmed. The court held that the intake officer at the juvenile detention center had no duty to make an independent assessment of probable cause for the juvenile detainee's arrest and detention, and thus did not violate the detainee's Fourth Amendment rights by signing a complaint prepared by the arresting officer that charged the detainee as a delinquent child. (Clermont County Juvenile Detention Center, Ohio)

U.S. Appeals Court
SEARCHES

T.S. v. Doe, 742 F.3d 632 (6th Cir. 2014). Parents, on behalf of their minor children, brought a § 1983 action against the superintendent of a juvenile detention center, correctional officers, and other administrators, claiming that the suspicionless strip search of the juveniles, as part of the intake process of the detention center, violated the juveniles' Fourth Amendment rights. The district court granted summary judgment for the parents. The defendants appealed.

The appeals court affirmed in part, reversed in part, and remanded. The court held that the right of juvenile detainees held on minor offenses to be free from suspicionless strip searches was not clearly established at time the two juveniles arrested for underage drinking were strip searched, and thus, correctional officers who conducted searches were protected by qualified immunity from liability in the § 1983 action arising from the searches. The court noted that prior court decisions had recognized that a strip search of a person arrested for a minor offense was unreasonable, given that subsequent court decisions had found that state's enhanced responsibility for juveniles supported strip searches, and a recent Supreme Court decision had concluded that the Fourth Amendment did not prohibit strip search of all adult criminal detainees. The court found that under Kentucky law, the correctional officers' strip searches of the two juveniles, as part of the intake process of a juvenile detention center, were ministerial acts, and thus, the officers were not eligible for qualified official immunity from liability on the juveniles' claims of negligence, invasion of privacy, assault, false imprisonment, grossly negligent infliction of emotional distress, and arbitrary action in violation of state constitution, even if officers were both acting in good faith and within scope of their employment. (Breathitt Regional Juvenile Detention Center, Kentucky)

2015

U.S. Appeals Court
FAILURE TO PROTECT

Doe v. Cook County, Illinois, 798 F.3d 558 (7th Cir. 2015). Detainees at a county juvenile detention center brought a class action against the center and the county, alleging that some employees at the center violated their constitutional rights by abusing their charges. The facility administrator, who was appointed to run the detention center as part of a settlement between the parties, proposed to terminate the employment of 225 direct-care employees and require them to apply to fill the new positions. The union for the employees intervened to oppose the administrator's plan, arguing that the proposal violated Illinois employment law by overriding the collective bargaining and arbitration statutes. The district court authorized the administrator to implement the plan. The union appealed. The appeals court reversed and remanded. The appeals court held that the district court's approval of the administrator's plan was not a simple enforcement of the order appointing the administrator, and thus the district court was required pursuant to the Prison Litigation Reform Act (PLRA) to make findings that the relief requested by the administrator was narrowly drawn, extended no further than necessary to correct the violation of a federal right, and was the least intrusive means. (Cook County Juvenile Temporary Detention Center, Illinois)

U.S. District Court
MEDICAL CARE
USE OF FORCE
CONDITIONS
SUICIDE

Hughes v. Judd, 108 F.Supp.3d 1167 (M.D. Fla. 2015). Several juveniles, as representatives of other juveniles similarly situated, brought a § 1983 action asserting that the sheriff of a Florida county and the health care provider retained by the sheriff violated the juveniles' rights under the Fourteenth Amendment during the juveniles' detention at the county jail. The district court held that the plaintiffs failed to prove that either the sheriff or the health care provider was deliberately indifferent to any substantial risk of serious harm during the juveniles' detention, or that their policies or customs effected any other constitutional violation. According to the court, at most, the juveniles showed only that two persons, each of whom was qualified to testify as an expert, disfavored some of the sheriff's past or present managerial policies and practices and advocated the adoption of others they felt were superior for one reason or another.

The court found that the juvenile detainees' challenges to particular conditions of confinement at the jail were mooted by changes, which included elimination of a "holding cage," elimination of the holding area for even temporary suicide watches, installation of cameras in each sleeping cell with monitors posted above each dorm, updating of the physical facility, relocation of the classrooms, a 48-hour review for juveniles in isolation, and installation of a radio frequency identification (RFID) system. The court found that the use of pepper spray against the juvenile detainees at the county jail did not violate the Eighth Amendment, where pepper spray was effective for quickly stopping a fight without inflicting injury, nearly every use of pepper spray at that jail was to stop a fight, and there was no evidence that the pepper spray had lasting, negative effect. (Polk County Central County Jail, Florida, and Corizon Health, Inc.)

U.S. Appeals Court
SEARCH

J. B. ex rel. Benjamin v. Fassnacht, 801 F.3d 336 (3d Cir. 2015). Parents of a juvenile, who was arrested and charged with summary offenses and committed to a youth detention facility after he threatened several girls in his neighborhood, brought an action on his behalf against state troopers, a county, and county officials, asserting claims under § 1983 for false arrest, unreasonable search, false imprisonment, and violations of due process. The district court granted summary judgment in favor of the defendants, in part, and denied summary judgment on the unreasonable search claim. The officials appealed, challenging the denial of summary judgment as to the unreasonable search claim. The appeals court reversed and remanded. The court found that held that the strip searches conducted by the juvenile detention center as a standard part of the intake process for juvenile detainees before their admission to general population were reasonable. The searches required detainees to remove all clothing for close visual inspection, but did not involve any touching by an inspecting officer. According to the court, although the searches were intrusive and juvenile detainees had an enhanced right to privacy, the detainees' privacy interests were outweighed by the center's penological interests in addressing the risk of introducing contagious infections and diseases into the general population, detecting contraband, and identifying potential gang members. The court found that the searches promoted the center's responsibility to screen juvenile detainees for signs of abuse in their home and self-mutilation. (Lancaster County Juvenile Probation, Lancaster County Youth Intervention Center, Pennsylvania)

U.S. Appeals Court
SENTENCE

Thompson v. Roy, 793 F.3d 843 (8th Cir. 2015). A juvenile who was convicted of first degree premeditated murder and first degree murder while committing a robbery, was sentenced to two consecutive sentences of mandatory life imprisonment without the possibility of parole. The juvenile filed a petition for a writ of habeas corpus, which the district court denied. The juvenile appealed. The appeals court affirmed. The court found that while imposition of a sentence of mandatory life imprisonment without possibility of parole for a juvenile homicide offender violated the Eighth Amendment, it did not apply retroactively to cases on collateral review. (Minnesota)

U.S. District Court
CONDITIONS
SEPARATION
PROGRAMS

Turner v. Palmer, 84 F.Supp.3d 880 (S.D.Iowa 2015). A 16-year-old who had been adjudicated delinquent and who had prior psychiatric hospitalizations, brought an action against the operators of a state-run juvenile home under § 1983 for violations of her due process rights under the Fifth, Eighth, and Fourteenth Amendments, based on the alleged systematic and excessive use of cement-walled isolation cells. The defendants moved to dismiss. The district court denied the motion, finding that the juvenile stated a claim for due process violations and alleged a continuing violation. The facility had several small cement isolation cells, labeled Quiet Rooms, Safety Rooms, Comfort Rooms, and the Special Unit. The prisoner alleged that she spent numerous consecutive weeks locked in isolation cells, spending 289 out of the 528 days she was at the facility in isolation. She claimed she was only given one thin mat to sleep on, was only permitted to exit the cell to use the restroom; and during many of these stays, she was not allowed any homework, classroom instruction, reading material, or outside communication. (Iowa Juvenile Home, Toledo, Iowa)

2016

U.S. Appeals Court
SENTENCE

U.S. v. Jefferson, 816 F.3d 1016 (8th Cir. 2016). After a juvenile's life sentence for homicide was affirmed under the then-mandatory federal Sentencing Guidelines, the defendant filed a motion to vacate the sentence, seeking resentencing in light of the U.S. Supreme Court's decision in *Miller v. Alabama*. The district court resentenced the defendant to 600 months in prison, varying downward from advisory Guidelines' range of life in prison. The defendant appealed. The appeals court affirmed, finding that his sentence did not fall within the categorical ban in *Miller* on mandatory life-without-parole sentences for juvenile offenders. The court found that the 600-month sentence was not substantively unreasonable, and that the sentencing disparity compared to another juvenile was based on legitimate distinctions. (Minnesota)